

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company d/b/a	:	
Ameren Illinois	:	
	:	20-0308
Proposed General Increase in Rates and	:	
Revisions to Other Terms and Conditions	:	
of Service. (Tariffs filed February 21, 2020)	:	

PROPOSED ORDER

November 12, 2020

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ORDER

By the Commission:

I. INTRODUCTION

On February 21, 2020, Ameren Illinois Company d/b/a Ameren Illinois (“AIC”, “Ameren” or the “Company”) filed with the Illinois Commerce Commission (“Commission”) its 10th Revised Sheet Nos. 11.001 and 11.002, 11th Revised Sheet No. 12, 10th Revised Sheet Nos. 12.001 and 12.002, 11th Revised Sheet No. 13, 10th Revised Sheet Nos. 13.001 and 13.002, 11th Revised Sheet No. 14.001, 12th Revised Sheet No. 14.002, 13th Revised Sheet No. 14.003, 10th Revised Sheet No. 14.004, 5th Revised Sheet No. 14.005, 9th Revised Sheet No. 14.006, 14th Revised Sheet No. 15, 11th Revised Sheet No. 15.001, 7th Revised Sheet No. 15.004, 3rd Revised Sheet Nos. 16 and 17, 3rd Revised Sheet No. 17.003, 7th Revised Sheet No. 24, 10th Revised Sheet No. 24.001, 8th Revised Sheet No. 26, 10th Revised Sheet No. 26.001, 1st Revised Sheet No. 34.001, 2nd Revised Sheet No. 41.001, and 6th Revised Sheet No. 41.002 (“proposed tariffs”), in which it proposed a general increase in gas delivery service rates and revisions to other terms and conditions of service, to be effective April 6, 2020.

Simultaneous with and in support of the proposed tariffs, AIC filed direct testimony, exhibits, and schedules in compliance with the Commission’s Rules. See 83 Ill. Adm. Code 285, 286, and 287.

On March 18, 2020, the Commission suspended the filing to and including July 19, 2020, and entered into a hearing on the propriety of AIC’s proposed tariffs, initiating the instant proceeding. On June 30, 2020, the Commission resuspended the proposed tariffs to and including January 13, 2021.

Pursuant to due notice, prehearing conferences were held on April 28, 2020 and September 9, 2020 before duly authorized Administrative Law Judges (“ALJs”) of the Commission. The ALJs issued notice of the procedural schedule on April 30, 2020, which was later modified on May 15, 2020.

During the course of the proceeding, the following parties were granted leave to intervene and participate: Citizens Utility Board (“CUB”); Archer-Daniels-Midland Company, Phillips 66 Company, and Tate & Lyle Ingredients Americas, Inc., as members

of the Illinois Industrial Energy Consumers (“IIEC”); and Federal Executive Agencies (“FEA”). The Illinois Attorney General’s Office (“AG”) filed an appearance and participated as a party of right. Staff of the Commission (“Staff”) also participated in the proceeding.

An evidentiary hearing was held on September 15, 2020. At the evidentiary hearing, testimony and exhibits filed by the parties were admitted into evidence. On October 6, 2020, the evidentiary record was marked “Heard and Taken.”

On October 5, 2020, Initial Briefs (“IB”) were filed by the following parties: AIC, Staff, the AG, IIEC and FEA (jointly “IIEC/FEA”), and IIEC, CUB and FEA (jointly “IIEC/CUB/FEA”). On October 16, 2020, AIC, Staff, the AG, IIEC/FEA and IIEC/CUB/FEA filed Reply Briefs (“RB”). On October 20, 2020, the parties submitted for the Commission’s consideration position statements and draft orders.

A. Nature of AIC’s Operations

AIC is a combination gas and electric public utility whose service area is located in central and southern Illinois. AIC provides electric delivery service to approximately 1.2 million customers and gas delivery service to more than 800,000 natural gas customers. AIC’s service territory covers more than 1,200 communities and 43,700 square miles. AIC’s delivery system includes approximately 18,500 miles of natural gas transmission and distribution mains and includes 12 underground natural gas storage fields with a total capacity of approximately 24 billion cubic feet.

Since the 2010 merger of the AIC legacy companies, AIC has three rate zones, each tied to an individual legacy company: Rate Zone I (Central Illinois Public Service Company), Rate Zone II (Central Illinois Light Company), and Rate Zone III (Illinois Power Company). In Docket No. 17-0293, AIC requested, and the Commission granted, a waiver of the Part 285 rate zone related filing requirements to allow AIC to file the following in this rate case: (a) a single set of A, B, C, and G schedules, as listed in Part 285 Sections 285.1000 – 285.1025, Sections 285.2000 – 285.2200, Sections 285.3000 – 285.3600, and Sections 285.7000 – 285.7075, respectively (Accounting Schedules); (b) a single set of E-6 schedules, as listed in Section 285.5110 (ECOSS Schedules); and (c) a single set of E-4, E-5, E-8, and E-9 schedules, as listed in Sections 285.5025, 285.5105, 285.5130, and 285.5135 (Bill Schedules).

AIC is a public utility per the Public Utilities Act (the “Act”). 220 ILCS 5/3-105.

B. Test Year

AIC’s proposed tariffs are based on a future test year ending December 31, 2021. No party contested the use of this test year.

II. RATE BASE

A. Uncontested Issues

1. Cash Working Capital

AIC presented the results of a Lead/Lag Study prepared by Concentric Energy Advisors, Inc. for AIC’s gas business, which AIC used to develop Cash Working Capital (“CWC”) factors to calculate the Company’s CWC requirements. Staff presented

adjustments to the CWC calculations based on the Gross Lag Approach methodology, including: (1) changes for Employee Benefits; (2) changes for Operating and Maintenance (“O&M”) Expenses; and (3) changes to the expense and revenue inputs into the CWC calculation. The AG proposed adjustments to the CWC calculations to reflect changes in the lead days for: (1) O&M Expense less Uncollectibles; and (2) Employee Benefits. AIC accepted the adjustments proposed by Staff and the AG. The Commission finds AIC’s CWC requirements, as adjusted by Staff and the AG and accepted by AIC, reasonable and they are hereby approved.

2. Accumulated Deferred Income Taxes

Staff presented an adjustment to AIC’s Accumulated Deferred Income Taxes (“ADIT”), which reflected proration corrections. AIC accepted Staff’s adjustment. The Commission finds that AIC’s ADIT, as adjusted by Staff and accepted by AIC, is reasonable and it is hereby approved.

3. Asset Separation Project Adjustment

To determine the appropriate amount of General and Intangible (“G&I”) plant to include in rate base, AIC performed the Asset Separation Project (“ASP”), which identified the portion of the common G&I plant recorded in the electric plant accounts December 31, 2019 through December 31, 2021 that should be allocated to gas delivery services operations for ratemaking purposes. AIC updated its ASP for changes in investment, asset utilization, and asset retirements through 2021 using the allocation methodology and allocation factor percentages that the Commission approved in prior cases. Staff proposed adjustments to the ASP to correct certain allocations and the inclusion of plant items no longer in use. AIC accepted Staff’s adjustments. The Commission finds the allocations per AIC’s ASP, as adjusted by Staff and accepted by AIC, reasonable and they are hereby approved.

4. Materials and Supplies

AIC proposed a thirteen-month average balance for general Materials and Supplies allocable to gas operations and gas inventory due to the fact that balances fluctuate from month to month. AIC proposed a reduction in Materials and Supplies and Gas Inventory for the portion of the thirteen-month average balance in accounts payable, which represents the restatement of December 2021 ending inventory to the thirteen-month average, net of associated inventory remaining in accounts payable. Staff agreed with AIC’s proposals. The Commission finds AIC’s Materials and Supplies balance, as adjusted by AIC and accepted by Staff, reasonable and it is hereby approved.

5. Vehicle Depreciation

Staff proposed an adjustment to reflect an additional year of depreciation to be included in accumulated depreciation for a shift in the timing of AIC’s projected gas vehicle additions. AIC accepted Staff’s adjustment. The Commission finds AIC’s level of Vehicle Depreciation, as adjusted by Staff and accepted by AIC, is reasonable and it is hereby approved.

6. Cancellation of Project J08PB

During the course of the proceeding, AIC noted in discovery that it had cancelled Digital Project J08PB and that the related costs should therefore be removed from the Company's proposed revenue requirement. Staff presented adjustments to remove the Project J08PB costs from both AIC's Operating Income Statement and Balance Sheet. AIC accepted Staff's adjustments. The Commission finds that it is reasonable to remove Project J08PB from AIC's proposed revenue requirement, as reflected in Staff's adjustments, which were accepted by AIC.

7. Prior Plant Disallowance

The AG proposed an adjustment to AIC's Prior Plant Additions Disallowed to reflect the impact of the proposed State income tax rate change. AIC accepted the AG's adjustment. AIC agreed to reduce its rate base by \$28,000, correcting the Company's adjustment for prior plant disallowances for the number of years of depreciation expense that were included in the adjustment on Ameren Sch. B-2.1. Ameren Ex. 19.2, Sch. 2 at 1, col. (f); AG Ex. 1.0 at 11. The Commission finds AIC's Prior Plant Additions Disallowance, as adjusted by the AG and accepted by AIC, is reasonable and it is hereby approved.

8. EE Rider Adjustment

AIC proposed to include labor related to AIC's gas energy efficiency ("EE") program in Rider GER – Gas Energy Efficiency Cost Recovery ("Rider GER") rates instead of AIC's normal base delivery rates. Pursuant to a stipulation between AIC and the AG in Docket No. 19-0632, the Commission approved the switching of 2020 program year electric EE-related Company labor costs and EE-related travel costs for cost recovery in AIC's electric formula rate update proceeding to be filed in 2021. In Docket No. 19-0370, Staff and AIC agreed that the EE internal labor recovery in its gas jurisdiction should mirror recovery of such costs in its electric jurisdiction. The test year 2021 revenue requirement in this proceeding is the first opportunity for AIC to transition gas EE internal labor from base rates to rider recovery.

The AG proposed an adjustment to ADIT for purposes of Rider GER. AIC accepted the AG's adjustment. AIC increased the ADIT balance by \$8,000 to correct the Company's adjustment to remove plant costs recovered through Rider GER presented on Ameren Sch. B-2.7. See Ameren Ex. 19.2, Sch. 2 at 1, col. (g). This correction provided that the 2021 ADIT impact is accounted for only in the proration of the ADIT on Ameren Schedule G-7, and not also on Ameren Schedule B-2.7. AG Ex. 1.0 at 12; AG Ex 1.2 (Attachment C-2).

The Commission finds that ADIT for the purposes of AIC's Rider GER, as adjusted by the AG and accepted by AIC, is reasonable and it is hereby approved.

9. 2020-2021 General Plant Retirement

During the course of the proceeding, AIC determined that it erroneously excluded the General Plant Retirements for 2020 and 2021 from its Part 285 Schedules B-5 and B-6. Staff presented an adjustment to correct the omission. AIC accepted Staff's adjustment. The Commission finds that AIC's proposed level of General Plant

Retirements, as adjusted by Staff and accepted by AIC, is reasonable and it is hereby approved.

10. Adjustment to Remove 2021 QIP from Rate Base

The AG and Staff presented adjustments to correct the amount of 2021 QIP removed from the average 2021 rate base. AIC accepted the adjustments, except for an initial AG proposal that AIC remove the associated ADIT more than once, which the AG subsequently withdrew. These adjustments result in (1) the removal of the average increase in the depreciation reserve (AG Ex. 1.2, Attach. B at 7), and (2) the inclusion of the impact of associated retirements, cost of removal, and salvage on the depreciation reserve (AG Ex. 1.2, Attach. B at 3).

The Commission finds this specific adjustment to correct the amount of 2021 QIP removed from the average 2021 rate base, as proposed by the AG and Staff and accepted by AIC, reasonable and it is hereby approved.

B. Contested Issues

1. Other Post-Employment Benefit Costs Contra Liability

a) AIC's Position

AIC explains that it is including an approximately \$24 million Other Post-Employment Benefit ("OPEB") contra-liability balance in rate base (increasing the revenue requirement by \$2.4 million) to partially offset the projected test year net cash benefit to ratepayers of \$9.2 million in negative OPEB expense. AIC further explains that this fairly balances the benefit of negative OPEB expense for customers with the adverse impact of the negative OPEB expense on the utility.

AIC states that negative OPEB expense reduces the revenue requirement, providing a customer benefit. AIC customers have received the benefit of negative OPEB expense (which arises because OPEB Plan assets exceed obligations) in rates since late 2018 and will continue to receive that benefit when new rates go into effect in 2021. AIC notes that, although the negative OPEB expense reduces revenue requirement, the negative expense adversely affects AIC's cash flow, because the cash expenditures that AIC needs to operate its utility business have not actually decreased, and AIC cannot access the excess funds in the OPEB Trust to make up the shortfall.

Essentially, AIC explains that its customers are receiving a revenue requirement credit, while the Company has to make up for reduced cash flow by obtaining those funds elsewhere. AIC's inability to withdraw the excess funds in the OPEB Trust means that shareholders must bear the cash flow burden of the negative OPEB expense in rates. Reflecting the OPEB contra-liability as an addition to rate base offsets, in part, the cash flow impact on the utility. AIC's proposal thus shares the customer benefit of the negative OPEB expense and the adverse impact of reduced cash flow on the utility between the utility and customers. AIC argues that the Company's proposal should be approved.

AIC notes that both Staff and the AG oppose AIC's proposal, focusing on whether the contra-liability was funded by shareholders. But this overlooks AIC's actual basis for including the OPEB contra-liability in rate base. AIC acknowledges that the asset was not directly created with a contribution of shareholder funds, insofar as it was the market

return on the OPEB Trust investments that created the contra-liability balance. But the basis for AIC's proposal is to share the burdens and benefits of the negative OPEB expense between the utility and customers. And, AIC asserts that the record establishes that the proposal does just that.

AIC explains that OPEBs are non-income related retirement benefits that are earned during an employee's career but are then paid after an employee's career is over. OPEB benefits are governed by US Generally Accepted Accounting Principles ("GAAP"). Accounting Standards Codification ("ASC") Section 715-60 governs financial accounting and reporting for OPEB Plans.

Furthermore, AIC argues that an annual accrual expense is determined for the OPEB Plan in accordance with the accounting standard. The annual accrual expense includes the cost of benefits earned during the year, the expected change in the Plan's funded status, and recognition of historical gains and losses that have not yet been recognized into expense. AIC's policy is to make contributions to the OPEB Trust (the entity that holds the Plan's assets that have been set aside to pay future OPEB benefits) at an amount equal to this annual OPEB expense for a given year. When the annual expense is negative, however, AIC does not make any contributions into the Trust. AIC notes that under federal law, assets cannot be removed from the OPEB Trust to reimburse the utility for any reduction in revenue.

On the other hand, when the OPEB expense is positive, this increases the utility's operating expenses for purposes of calculating the revenue requirement. AIC states that where accruals for OPEB expense that are recovered in rates are greater than the payments made by the utility into the Trust, the Commission's practice has been to reduce rate base by the cash flow mismatch amount. See, e.g., *Ameren III. Co. d/b/a Ameren III.*, Docket No. 11-0282, Order at 19 (Jan. 10, 2012).

AIC maintains that a negative OPEB expense typically results when the expected return on Plan assets exceeds interest cost on the OPEB benefit obligations, producing income on the utility's income statement. When the OPEB expense is negative, this decreases the utility's operating expenses for purposes of calculating the revenue requirement.

AIC notes that it is currently experiencing significant negative OPEB expense - \$9.2 million in the test year and a cumulative amount of almost \$25 million during 2019-2021. This is primarily due to the strong market returns on Plan assets, resulting in Plan assets exceeding Plan obligations. AIC has also taken action to manage the cost of benefits offered by the OPEB Plans, which have resulted in reductions in expense. AIC thus projects paying nothing into the OPEB Trust in the test year, because AIC's forecasted test year level of OPEB expense is negative.

This negative OPEB expense does not, however, reduce the actual cash expenditures that AIC must incur to run its business, because the costs that AIC incurs for operations do not actually go down. Instead, AIC's accounting records show on paper that the Company requires less funds to operate, but in reality, operating expenses stay the same. As Ameren Ex. 19.9 demonstrates, from an accounting perspective, that negative OPEB expense in rates is not offset by reduced cash requirements, because there is no offsetting entry for a debit to a cash or receivable account.

AIC states that federal law does not allow the Company to withdraw the funds from the Trust to make up for the revenue decrease. This means that the negative OPEB expense adversely affects AIC's cash flow in the test year—AIC's revenue requirement is reduced by \$9.2 million, but its cash operating expenses are not. So, AIC's cash flow is reduced by that amount.

AIC points out that negative OPEB expense benefits ratepayers. But, as indicated, there is an adverse cash flow impact. In order to achieve a fair balance, AIC is proposing a sharing of burdens and benefits to address this adverse cash flow impact.

AIC asserts that in this case, ratepayers will see the benefit of negative OPEB expense through a reduction in rates of \$9.2 million in the test year, and in each year AIC's new rates are in effect. And since rates set in Docket No. 18-0463 also reflected negative OPEB expense, they have also received this benefit in rates since November 2018. AIC states that the cumulative ratepayer benefit is \$25 million and increases over time.

AIC believes that the cash flow shortfall is a burden on AIC's business operations needed to serve customers. As a solution to the cash flow impact, therefore, AIC proposes to continue to reflect the negative OPEB expense accrual as an operating expense (thereby decreasing AIC's operating expenses, and so its revenue requirement). As stated above, this is forecast as a \$9.2 million reduction in expense for the test year. But AIC proposes to partially offset this decrease by including the OPEB contra-liability of \$24 million in rate base.

AIC asserts that the Company's proposal fairly balances the impact of negative OPEB expense on both the utility and customers. Customers have received the benefit of negative OPEB expense in rates since late 2018 and will continue to receive that benefit when new rates go into effect in 2021. However, because the Company is not able to access the excess funds in the OPEB Trust to make up for reduced cash under federal law, the Company has to make up for reduced cash flow by obtaining those funds elsewhere. AIC asserts, therefore, that a return on the OPEB contra-liability compensates the utility for the time value of money effect of the cash flow reduction.

AIC believes that, otherwise, all else equal, a reduction in revenue requirement without a matching reduction in cash operating expense will limit AIC's ability to earn its authorized return. AIC's proposed inclusion of the OPEB contra-liability in rate base recognizes this, by sharing the customer benefit of the negative OPEB expense and the adverse impact of reduced cash flow on the utility between the utility and customers. AIC's overall goal of this proposal is to fairly balance the impact of negative OPEB expense on both the Company and ratepayers. But the net benefit remains with the ratepayer.

AIC states that ratepayers have received the benefit of negative OPEB expense in rates since late 2018 and will continue to receive that benefit when new rates go into effect in 2021 under the Company's proposal. As Ameren Exhibit 2.3 shows, even reflecting the OPEB contra-liability as an addition to test year rate base still produces a net ratepayer benefit of \$6.8 million in the test year, and, because AIC did not include its OPEB contra-liability in rate base in its 2018 rate case, a cumulative ratepayer benefit, in revenue requirement terms, of over \$20 million for the years 2018-2021. AIC explains

that the approach that it proposes is also consistent with prior Commission decisions. In Docket No. 11-0282, the Commission deducted the OPEB liability from rate base. Docket No. 11-0282, Order at 19. It follows that if the OPEB liability is deducted from rate base, then the OPEB contra-liability should be added to rate base. Importantly, AIC is not suggesting this solution for the sake of uniformity. AIC argues that there is a real and growing impact from the large negative OPEB expense that must be remedied.

Similarly, Docket No. 13-0301 also provides guidance. In its Order, the Commission endorsed AIC's view that, "because OPEB Contra-liability represents amounts funded into the OPEB Trust in excess of amounts recovered from customers as operating expense in rate . . . inclusion in rate base is appropriate." *Ameren Ill. Co. d/b/a Ameren Ill.*, Docket No. 13-0301, Order at 36-37 (Dec. 9, 2013). Here, AIC essentially faces the same scenario, insofar as the amount funded into the trust (\$0), is greater than the negative OPEB expense. Docket No. 13-0301 represents a Commission decision to include the OPEB contra-liability in rate base on the electric side of AIC's business since 2013. While Docket No. 13-0301 is an electric formula rate case, AIC contends the Docket No. 13-0301 Order shows that the Company placed additional funds into the OPEB Trust above what was recovered in rates, to fund a shortfall and bring the Trust to funded status. See Docket No. 13-0301, Order at 35. Because ratepayers only pay in rates the actuarially-determined OPEB accrual expense each year, the market returns that drive the overfunded status of the OPEB Plan and the OPEB contra-liability start from a baseline founded on shareholder, not ratepayer, contributions to fund the OPEB Plan in 2012. Both Docket Nos. 11-0282 and 13-0301 are therefore instructive and support approval of AIC's proposal.

As an alternative proposal, because the actual amount that AIC is required to pay into the OPEB Trust in the test year is zero, AIC proposes to set the test year level of OPEB expense at the projected level, but not less than zero. AIC notes that this approach would set rates based on AIC's actual cash expenditure and eliminate both the negative expense and the addition of the contra-liability to rate base. AIC asserts that this alternative approach is similar to the one used for Injuries and Damages, where AIC converts from reserve accruals to cash claims paid for ratemaking purposes, with no rate base deduction for the reserve liability.

AIC states that Staff and the AG propose to remove the OPEB contra-liability from rate base on the grounds that it represents an asset that is not shareholder-funded. Staff's and the AG's arguments make the assumption that if shareholders did not directly supply the funds, they must be ratepayer-supplied. This assumption then forms the basis for Staff's and the AG's conclusion that the OPEB contra-liability fits into the pattern of past Commission decisions on pension assets. AIC acknowledges that the asset was not directly created with a contribution of shareholder funds, insofar as it was the return on the OPEB Trust plan investments that created the contra-liability balance (though that also means ratepayers did not directly supply the funds either).

AIC contends that this assumption is simplistic. AIC explains that a negative OPEB expense typically results when the expected return on plan assets exceeds interest cost on the OPEB benefit obligations, producing income on the utility's income statement. AIC's test year negative OPEB expense is primarily due to the strong market returns on OPEB Plan assets, resulting in Plan assets exceeding Plan obligations. AIC has also

taken action to manage the cost of benefits offered by the OPEB Plans, which have resulted in reductions in expense. If the OPEB Plan is overfunded due to a strong market performance, the OPEB contra-liability was not directly funded by a contribution of shareholder funds. But, as AIC explains, the OPEB contra liability balance is primarily driven by negative OPEB expense, as shown in Ameren Ex 19.9. Since AIC cannot withdraw funds from the OPEB Trust, shareholders must make up the cash flow shortfall, meaning that shareholders are indirectly funding the OPEB contra liability.

According to AIC, the OPEB contra-liability is not directly created with ratepayer funds either; it is the market return that creates the overfunded status. Ratepayers have not contributed anything to the OPEB Plan during the period of negative OPEB expense going back to 2018, as shown in Ameren Exs. 2.3 and 19.9. Therefore, AIC contends, if neither shareholders nor ratepayers can be said to have directly funded the contra-liability, then AIC's proposed approach, which balances the interests of ratepayers and shareholders, makes sense.

AIC states that it follows that Staff's and the AG's criticisms do not rebut AIC's reason for proposing to include the contra-liability in rate base. AIC's position is that because the negative OPEB expense reduces revenue requirement without reducing the cash expenditures that AIC needs to operate its business, there is a cash flow impact on the utility of negative OPEB expense. AIC's proposed inclusion of the OPEB contra-liability in rate base recognizes this, by sharing the customer benefit of the negative OPEB expense and the adverse impact of reduced cash flow on the utility between the utility and customers. In summary, the basis for AIC's proposal is that AIC's inability to withdraw funds from the OPEB Trust means shareholders must bear the burden of the negative OPEB expense in rates.

AIC notes that Staff cites Docket Nos. 04-0779 and 08-0363 as basis for opposing AIC's proposed solution. The AG relies on similar arguments, citing Docket Nos. 09-0166/09-0167 (Cons.).

AIC maintains that, generally, these dockets relied upon by Staff and the AG are not instructive or persuasive because: (1) they are stale, and do not address the current expense and market conditions that AIC faces (and one could go back another ten years and find a case where the Commission did approve a pension asset, see *Cent. Ill. Light Co.*, Docket No. 94-0040, 1994 WL 747589 (Ill.C.C.), 158 P.U.R.4th 1, Order (Dec. 12, 1994); (2) they deal with pension assets, which have slightly different accounting treatment and rules than OPEB assets; and (3) even if similarities were drawn between pension assets and OPEB assets, in the cited dockets, the Commission declined to add the pension asset to rate base because it determined ratepayers supplied the funds, and did not address the real issue here, which is the effects of the large and growing negative expense on AIC's cash flow.

Additionally, in Docket Nos. 04-0779 and 08-0363, the pension asset was due in part to charges for excess pension costs due to changes in actuarial pension assumptions used by Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor"), not solely plan returns. Both cases examined whether the source of the funding for the pension asset was a direct contribution from shareholders to the pension trust. *N. Ill. Gas Co. d/b/a Nicor Gas Co.*, Docket No. 04-0779, Order at 26 (Sept. 20, 2005); *N. Ill. Gas Co.*

d/b/a Nicor Gas Co., Docket No. 08-0363, Order at 18 (Mar. 25, 2009). AIC notes that, as discussed above, that is not the issue here, but rather the fact that shareholders must make up the cash-flow shortfall caused by the inclusion of negative OPEB expense in rates.

Docket Nos. 09-0166/09-0167 (Cons.) are also distinguishable. They addressed a pension asset and liability and an OPEB liability, but not an OPEB contra-liability. *N. Shore Gas Co./The Peoples Gas Light and Coke Co.*, Docket Nos. 09-0166/09-0167 (Cons.), Order at 35-37 (Jan. 21, 2010). And, AIC notes, their consideration of whether to include a pension asset in rate base differed from this case in a key respect: in Docket Nos. 09-0166/09-0167 (Cons.), Peoples Gas' proposed test year pension expense was a positive expense, not a negative expense as here. *Id.* at 35. AIC argues that the Commission could not have considered the question of balancing the test year benefit of a negative expense with the burden of that negative expense on the utility's cash flow.

AIC notes that significantly, in Docket Nos. 09-0166/09-0167 (Cons.), the Commission recognized the need for consistent treatment of pension assets and liabilities: "Consistent with our decision in the Utilities' last rate case, the Commission finds that it is appropriate to treat Peoples Gas' pension asset and North Shore's pension liability consistently, i.e., the AG has appropriately excluded both from the rate base calculation." *Id.* at 36. AIC maintains that this confirms its point that the Commission should treat an OPEB liability and contra-liability consistently.

AIC takes the position that even if the cases cited by Staff and the AG were fully on point, the Commission can and should take a fresh look at this issue. The situation here—significant negative OPEB expense and significant contra-liability balances—is not a situation that has occurred often, and so warrants fresh consideration.

AIC believes its proposal to continue to reflect the negative OPEB expense as an operating expense but to partially offset the decrease by including the OPEB contra-liability in rate base fairly shares the burdens and benefits of this unusual situation between the utility and ratepayers. In the alternative, AIC proposes to set the OPEB expense at zero since AIC is not paying any amounts into the OPEB Trust in the test year, and so that would reflect AIC's real cash expenditure. AIC asserts that both solutions are fair and equitable to ratepayers and the Company.

b) Staff's Position

Staff argues that the Commission should approve Staff's adjustment to reverse the Company's OPEB contra-liability adjustment reflected on Company Schedule B-2.8 because the increase in rate base does not represent shareholder investment warranting a return in base rates. By the Company's own admission, the shareholders did not provide the funding, but rather the return on the plan investments created the OPEB contra-liability. Ameren Ex. 2.0 at 26. Therefore, the OPEB contra-liability should not be included in rate base as the shareholders should not be entitled to a return on an amount they did not provide.

The Company provided two examples of what it characterizes as a "cash flow mismatch" in the Orders of two different Ameren cases: an OPEB liability issue in Docket No. 11-0282 and an OPEB "contra-liability" issue in Docket No. 13-0301. Ameren Ex. 2.0

at 27. Neither of the Orders in the referenced cases discuss a “cash flow mismatch” in the determination of its conclusion. While the conclusions in those Orders speak for themselves, the circumstances in those cases are different from the instant case. Docket No. 11-0282, while it was a gas delivery service rate case, addressed how a deficit in the OPEB Trust should be treated under traditional ratemaking. Docket No. 13-0301 was an annual update filed under the Energy Infrastructure Modernization Act (“EIMA”), which sets forth specific protocols for the treatment of specific costs and circumstances for electric utilities that opted to file formula rates under Section 16-108.5. Since these two cases are not instructive in the current proceeding (a traditional rate case involving a surplus in the OPEB Trust), the Commission should not give them any weight in its decision.

AIC witness Stafford proposed that, as an alternative to including the OPEB contra-liability as an increase to rate base, the Company could set the OPEB expense at a projected level not less than zero because AIC is not required to pay into the OPEB Trust in the test year. There would be no impact to base rates in this proposal.

In two Nicor cases, Docket Nos. 04-0779 and 08-0363, Nicor proposed to include a pension asset (or “contra-liability”) in rate base and, at the same time, reflected negative pension expense in its operating expenses. The Commission Order rejected Nicor’s proposal to include the pension asset in rate base in both of these cases yet included the negative pension expense in operating expenses (Sch. C-11.3 in both Docket No. 04-0779 and Docket No. 08-0363).

In Docket No. 04-0779, the Commission found:

Nicor has not presented any additional evidence since the 1996 Order to show why the Commission should arrive at a different conclusion [about the pension asset] now. *It remains true that the pension asset was created by ratepayer-supplied funds, not by shareholder-supplied funds.* . . . Therefore, the Commission finds no reason to change the treatment of the pension asset.

Docket No. 04-0779, Final Order at 23 (emphasis added).

In Docket No. 08-0363, the Commission found:

The Commission finds that *the facts have not changed* since the time these two Orders issued and adopts the Staff and AG/CUB’s proposal to remove \$142,044,000 from rate base.

Docket No. 08-0363, Final Order at 18 (emphasis added).

Staff contends that the Commission should reject AIC witness Stafford’s alternate proposal based on the Final Orders in Nicor rate cases Docket Nos. 04-0779 and 08-0363 (Staff Ex. 1.0 at 17-18), in which the Commission rejected the proposal to include a pension asset in rate base and approved the negative pension expense that was reflected in the operating statement. AIC has not provided any compelling evidence why the Commission should depart from the basis for its decisions in these past cases.

c) AG's Position

The AG argues that the Commission should deny AIC's addition of \$23.984 million to rate base for the balance of OPEB contra-liability. The AG asserts that AIC's contentions contravene well settled Illinois case law and that the Company's request is not consistent with Commission practice. The AG argues that the Company's citations to Docket Nos. 11-0282 and 13-0301 are distinguishable and hence inapplicable. Docket No. 11-0282 "addressed how a deficit in the OPEB Trust should be treated under traditional ratemaking" and Docket No. 13-0301 "was an annual update filed under EIMA, which sets forth specific protocols for the treatment of specific costs and circumstances for electric utilities that opted to file formula rates under Section 16-108.5 [of the Act]." Staff IB at 3-4. The AG argues that the Company's contention is also a logical fallacy in that it wrongly extends the Commission's treatment of a deficit in an OPEB Trust with the unassociated and unaddressed proposal to allow the utility to allow shareholders to profit from the situation of a surplus in an OPEB Trust. The AG agrees with Staff witness Ebrey's statements that these dockets "are not instructive" for the instant case, and that "the Commission should not give them any weight in its decision." Staff Ex. 1.0 at 17.

The AG argues that what is instructive for the Commission are those dockets that demonstrate its long-standing practice of rejecting proposed adjustments by utilities that seek to include a pension asset in rate base and include a negative pension expense in operating expenses. See, e.g., *N. Shore Gas Co./The Peoples Gas Light and Coke Co.*, Docket No. 12-0511, Order (April 26, 2013); and Docket Nos. 09-0166/09-0167 (Cons.), Order; Docket No. 04-0779, Order; Docket No. 08-0363, Order. The AG refutes AIC's contentions that these dockets are stale, that pension assets have slightly different accounting treatments, and that the real issue is not whether ratepayers supplied the funds.

The AG asserts that the Commission reached the same conclusion as it did in past dockets such as Docket Nos. 04-0779 and 08-0363 just a few years ago in *Northern Ill. Gas Co.*, Docket No. 17-0124, Final Order (Jan. 31, 2018). In that docket, a gas utility sought to include (again) net pension assets into rate base, which had become "overfunded;" it claimed the increase was due to "[c]ompany-raised capital" and "market appreciation." *Id.* at 21. Because the asset was overfunded, the company had made no contributions to the pension fund, which ratepayers had otherwise funded. *Id.* at 23. In rejecting the gas utility's adjustment, the Commission's dispositive analysis rested on the fact that these funds were funded by ratepayers, not shareholders. *Id.* at 28 (denying utility's adjustment where it "has not demonstrated sufficient evidence to show that the pension asset is comprised of any shareholder funds.").

The AG argues that the Commission in this case should reject AIC's adjustment because the Company has already admitted that the negative OPEB expense "was *not directly created with a contribution of shareholder funds*" (AIC IB at 12 (emphasis added)), and that it "is primarily due to the strong market returns on Plan assets." *Id.* at 8. According to the AG, AIC has not – and cannot – provide this Commission with sufficient and compelling evidence for it to depart from its prior decisions that shareholders do not receive a ratepayer funded return when shareholders have not provided the relevant funds.

The AG also claims AIC offers no explanation based on record evidence or case law on why the dockets cited by the AG should not guide the Commission's decision here, and that the Company instead continues to try to recast its argument as one of cash flow. The AG asserts that the Company's argument is irrelevant. See Staff Ex. 8.0R at 12 ("AIC witness Stafford's proposal has an effect on rate and revenue requirement that is identical to treating the OPEB contra liability as a pension asset. *He has done nothing but change the name of a practice the Commission has long rejected ...*") (emphasis added). In essence, the AG claims that the Company's argument that the real issue should not be whether OPEB contra-liability is funded by shareholders casts aside – with no explanation – well settled Illinois case law that protects consumers from paying a profit to AIC on money consumers themselves provided.

The AG points out that the Commission focused its analysis on this issue in Docket No. 17-0124 because Illinois case law has established the fundamental tenet that "utility stockholders should not be permitted to recover a return on money that they have not invested." *Du Page Util. Co. v. Ill. Commerce Comm'n*, 47 Ill. 2d 550, 554 (1971). The AG asserts that what is dispositive is the "*basic question*" of "the source of the funds used to create the [] asset for which rate base recovery is sought." See AG IB at 9, *citing Ill.-Am. Water Co.*, Docket No. 11-0767, Final Order at 7 (Sept. 19, 2012). The AG asks that the Commission adopt the AG's adjustment which removes the OPEB contra-liability of \$23.984 million from rate base, as reflected on AG Ex. 1.1, Schedule B-2.

d) Commission Analysis and Conclusion

The Commission agrees with Staff and the AG that the OPEB contra-liability adjustment is tantamount to a pension asset. AIC admits that those funds are not shareholder funds. Instead, they are a return on the plan investments created by the OPEB contra-liability. Pursuant to the Commission's repeated decisions, shareholders should not be entitled to a return on an amount they did not provide. The Commission also agrees with Staff that the decisions in two Nicor dockets, Docket Nos. 04-0779 and 08-0363, are instructive, as they confirm the Commission's longstanding treatment of ratepayer funds in Article IX rate cases, such as this one.

The Company's alternate proposal to set the OPEB expense at a projected level not less than zero would not impact base rates. The Commission agrees with Staff that the Company has not provided any rationale as to why the Commission should depart from its previous decisions. The Commission rejects the Company's addition of OPEB contra-liability of \$23.984 million to rate base.

2. QIP Additions

a) AIC's Position

AIC states that it proposes to include additions to its gas rate base related to Distribution Plant, Transmission Plant and Gas Storage Plant, G&I Plant, CWC, Materials and Supplies ("M&S"), and OPEB Contra-liability. AIC proposes to use calendar year 2021 as its test year. In its last gas rate case, Docket No. 18-0463, AIC explains that it used calendar year 2019 as its test year. *Ameren Ill. Co.*, Docket No. 18-0463, Order at 3 (Nov. 1, 2018). As a result, this filing updates AIC's plant in service balance to include 2019, 2020, and 2021 plant additions (except for 2021 Qualifying Infrastructure Plant

("QIP") additions), and 2019 QIP additions not included in AIC's rate base in Docket No. 18-0463.

AIC notes that it presented the direct testimony of Mr. Stephen Colyer to address the reasonableness and prudence of the Company's capital investment in natural gas plant. AIC explains that Mr. Colyer's direct testimony outlined the plant investment that will support gas service and be used and useful by the end of the 2021 test year and discussed major Specific Projects to be included in rate base, as listed on the Company's Schedule F-4. Mr. Colyer demonstrated the forecasted gas plant additions in rate base are reasonable in amount and necessary to provide safe, adequate and reliable gas service, and will be prudently incurred and used and useful by year-end 2021. AIC further notes that Mr. Colyer also presented evidence on how the Company prudently plans and manages the construction of all projects, regardless of the size or capital expenditure.

AIC states that Staff, IIEC, FEA, and CUB did not propose any adjustments to the plant additions to rate base.

AIC points out that AG witness Larkin-Connolly on the other hand, recommended a disallowance of \$433.1 million of QIP investments, which improperly included the 2021 QIP plant additions and contradicts AG witness Selvaggio's accounting adjustments in AG Exhibit 4.1, Schedules B-3, B-4, and B-5R as updated in Ameren Cross Exhibit 2. AIC argues that the AG's proposed adjustment to AIC's QIP plant additions is unreasonable and unsupported. AIC maintains that the AG did not refute AIC's evidence demonstrating that the forecasted gas plant additions in rate base are reasonable in amount and necessary to provide safe, adequate and reliable gas service.

AIC notes that specifically, Mr. Larkin-Connolly alleges the Company has not supported its capital investments of \$924.7 million through 2021 in this docket. AIC asserts that the AG's testimony, however, indicates that Mr. Larkin-Connolly disregards or does not understand how AIC plans, manages, and executes its capital investment. AIC notes that Mr. Larkin-Connolly did not provide a substantive analysis of the safety regulations driving the need for the capital investments outlined in AIC's direct testimony. AIC points out that Mr. Larkin-Connolly also did not identify one QIP or non-QIP capital project that was unnecessary, unreasonable, or imprudent. AIC further explains, that Mr. Larkin-Connolly speculates that the driver for AIC's increased investment is not the Company's need to replace aging infrastructure or its commitment to projects undertaken in compliance with federal regulations, but instead, that the investments are attributable to the Company's ability to recover costs through its Rider QIP. AIC argues that this theory is untenable as it ignores the fact that AIC customers benefit from a safer and more reliable system and AIC's natural gas rates have remained stable or lower from 2012-2019.

AIC states that additionally, without refuting any evidence presented by the Company, Mr. Larkin-Connolly arbitrarily concludes AIC's QIP investment budgets should be adjusted to limit recovery in this case because AIC requested approval of Rider QIP and presented estimated QIP investments in Docket No. 14-0573. The Commission, however, did not approve the estimated QIP investments as "caps" for QIP investments in that docket and the standard for recovery of AIC's forecasted test year costs in this proceeding is whether the costs are just and reasonable. 220 ILCS 5/9-101.

Consequently, the "caps" apply to recovery of revenues under Rider QIP and not to the Company's request for consideration in a general rate case. *Ill. Commerce Comm'n*, Docket No. 16-0376, Order at 129 (Jan. 10, 2018), *aff'd* 2019 IL App (1st) 180679-U (noting the Commission stated in its Docket No. 16-0376 Order any costs not approved through Rider QIP were still eligible for consideration in a general rate case). AIC notes that, as the AG recognized in Docket No. 16-0376, "there is no defined cap on the amount of QIP investment that can be incorporated into test-year rate base in a general rate case, other than a general prudence standard." *Id.* at 92.

AIC maintains that yet, Mr. Larkin-Connolly suggests without any factual support that the Commission apply increased scrutiny when reviewing capital investments and recommends a disallowance of \$433.1 million of QIP investments. AG Ex. 2.0 at 32. The AG, however, provided no factual or legal support for why increased scrutiny applies in this docket or why the Commission should deviate from the well-established legal standard of general prudence. As explained in more detail below, Mr. Larkin-Connolly's assertions are baseless and unsupported. AIC asserts that the AG did not present any evidence establishing that AIC's capital investments are unnecessary or unreasonable to maintain a safe and reliable natural gas system. The AG's arguments fail as a matter of law.

AIC's testimony and associated exhibits demonstrate the reasonableness of the proposed capital additions and the need for AIC to make capital investments. AIC notes that Mr. Colyer described AIC's natural gas system and explained the natural gas system consists of approximately 18,430 miles of transmission and distribution mains, which deliver natural gas throughout a service territory of 43,700 square miles. Additionally, AIC operates 12 underground gas storage fields, which are used to store natural gas during non-winter periods and withdraw gas during the winter heating season. Mr. Colyer also described the operating divisions and the respective responsibilities to manage day-to-day gas operations activities.

The burden shifts to the AG to make its case that the capital investments are unreasonable. AIC asserts that the AG failed to meet its burden. AIC notes that Mr. Larkin-Connolly admits that the Company's proposed projects "may individually represent reasonable projects to pursue," and acknowledges that the Company submitted "all required forms and schedules" providing support for the plant additions, meeting the Illinois Administrative Code Part 285 reporting requirements. However, despite this evidence and without identifying any specific project as unreasonable or imprudent, Mr. Larkin-Connolly alleges that the Company has not justified its overall budget for capital projects. AIC argues that Mr. Larkin-Connolly's wholesale dismissal of the Company's "project specific documentation [and] the narrative description of capital activities included to support the proposed plant additions" is unreasonable and appears to apply a new, more stringent, standard that is beyond what the Illinois Administrative Code and the Commission requires for the capital investment presented by the Company in this proceeding.

Moreover, AIC explains that the AG cannot simply ignore the Company's evidence provided under the Commission's rules since the burden shifts to the AG to support its adjustments. *Ill. Commerce Comm'n on Its Own Mtn. v. Ill. Consol. Tel. Co.*, Docket No. 94-0042, 1995 IL PUC LEXIS 828, *103 (Dec. 6, 1995) ("[I]n an investigation initiated by

the Commission to address the reasonableness of rates wherein parties proffer conflicting proposals, each party proposing a result should bear the burden of adducing evidence in support of that proposal.”); *Bell v. School Dist. No. 84*, 407 Ill. 406, 416 (1950) (“Where a party asks a court to believe a proposition and to base a finding thereon in his favor, the law casts the burden on him of furnishing the evidence upon which such finding can legally rest.”). AIC further explains that under the Act, AIC is entitled to recover its prudent and reasonable costs of service. 220 ILCS 5/1102(a)(vi). Accordingly, the Commission cannot authorize a revenue requirement that is less than the utility’s prudent and reasonable cost of service for the test year at issue. *Citizens Util. Bd. v. Ill. Commerce Comm’n*, 166 Ill. 2d 111, 121 (1995); *Ill. Bell Tel. Co. v. Ill. Commerce Comm’n*, 414 Ill. 275, 286 (1953); *North Shore Gas Co.*, Dockets 11-0280/0281 (Cons.), Order at 5 (Jan. 10, 2012).

AIC argues that the AG’s burden to support its adjustment is well-established; the Commission can disallow costs only if the record evidence establishes unreasonableness or imprudence in the Company’s business decisions. *See, e.g., Bus. & Prof’l People for Pub. Interest v. Ill. Commerce Comm’n*, 279 Ill. App. 3d 824, 829-30 (1st Dist. 1996); *Chicago v. Ill. Commerce Comm’n*, 133 Ill. App. 3d 435, 442-43 (1st Dist. 1985) (dismissing “the erroneous assumption that a utility has the burden of going forward on any and all issues which are conceivably relevant to the reasonableness of its proposed rates”) (“[O]nce a utility makes a showing of the costs necessary to provide service under its proposed rates, it has established a prima facie case, and the burden then shifts to others to show that the costs incurred by the utility are unreasonable because of inefficiency or bad faith.”).

AIC notes that the AG did not dispute the prudence of AIC’s decisions to replace aging infrastructure to maintain a safer and more reliable natural gas system. AIC’s testimony supported the reasonableness and prudence of proposed capital additions. AIC asserts that instead of presenting any evidence to refute AIC’s proposed plant additions, Mr. Larkin-Connolly never evaluated AIC’s “project specific documentation [and] the narrative description of capital activities included to support the proposed plant additions.” AIC states that instead, Mr. Larkin-Connolly simply states the Company’s information is “generic.”

AIC maintains that unsupported statements and baseless claims do not refute the testimony AIC provided detailing information regarding federal safety standards, the capital project planning process, and the need for the plant investment. Indeed, the AG merely makes conclusory statements, but admits that the Company’s proposed projects “may individually represent reasonable projects to pursue,” and acknowledges that the Company submitted “all required forms and schedules” providing support for the plant additions, meeting the Illinois Administrative Code Part 285 reporting requirements. AIC concludes that the AG simply did not meet its burden showing the capital investments are unreasonable.

AIC explains that applying the well-established legal standard governing the recovery of AIC’s forecasted capital investments, QIP and non-QIP, in this case, the disallowances and adjustments proposed by the AG should be rejected since the AG failed to support its proposed adjustment.

Furthermore, the AG cannot support its burden with false claims that QIP investment was limited by the Commission's approval of Rider QIP. AIC states that Mr. Larkin-Connolly acknowledges his testimony in this case builds upon the testimony he filed in Docket No. 19-0271 ("2019 QIP Reconciliation"). In both this docket and the 2019 QIP Reconciliation, Mr. Larkin-Connolly claims AIC's QIP spending should be commensurate with the initial three-year QIP investment estimates approved in Docket No. 14-0573 rather than the QIP statutory investment limit. AIC notes that the AG also contradicts positions taken in another docket where the AG recognized that "there is no defined cap on the amount of QIP investment that can be incorporated into test-year rate base in a general rate case, other than a general prudence standard." Docket No. 16-0376, Order at 92. AIC further notes that the AG has now changed its position in this docket and claims that AIC is undertaking too many reasonable and prudent projects and the Commission should limit recovery to 2014 estimated investment levels notwithstanding changes in federal and state regulations. AIC maintains that there is simply no legal or logical support for the AG's position.

In Docket No. 14-0573, the Commission reviewed and approved the terms and conditions of the Company's Rider QIP. *Ameren III. Co.*, Docket No. 14-0573, Order (Jan. 6, 2015). The Commission's Final Order in that proceeding did not limit AIC's QIP investment to the estimated investment levels presented in Docket No. 14-0573, as Mr. Larkin-Connolly claims. Rather, the Commission's Final Order in Docket No. 14-0573 limited an annual increase to the QIP surcharge consistent with the QIP statute. *Ameren III. Co.*, Docket No. 14-0573, Order at 8. The QIP statute provides a limit on cost recovery based on the level of investment approved in the last rate case, but the Commission's Final Order did not limit recovery of prudent QIP projects that were over the estimated investment levels presented by AIC in Docket No. 14-0573. In other words, AIC could increase its investment levels recovered through Rider QIP over those estimated in Docket No. 14-0573 so long as the statutory limit was not exceeded. Mr. Larkin-Connolly conflates the estimated QIP investment levels presented in Docket No. 14-0573 with the QIP statutory spending limit.

AIC notes that a specific example of the fallacy of Mr. Larkin-Connolly's argument is demonstrated by comparing the estimated QIP investment levels in Docket No. 14-0573 with the actual investment levels the Commission approved in the Rider QIP reconciliation dockets. The Company estimated expenditures of approximately \$58 million for 2016 QIP investments; the actual amount invested in 2016 QIP projects was \$81.8 million. These costs were examined in Docket No. 17-0134, the reconciliation of the prudently incurred costs in 2016. In that docket, no party argued that the increased level of QIP investment was imprudent, and no party suggested that the Commission limit AIC's QIP investments at the \$58 million investment level estimated in Docket No. 14-0573. Moreover, the Commission included the \$81.8 million investment in the original cost determination for AIC's rate base as of December 31, 2016 in Docket No. 18-0463 since the costs were just and reasonable. Notably, the AG did not contest the 2018 QIP investment levels in Docket No. 18-0463, but as discussed below, the AG now suggests the 2018 QIP investment is now unreasonable.

AIC states that Mr. Larkin-Connolly ignores the fact the Commission approved higher QIP investment levels in AIC's rate base in Docket No. 18-0463 than those

estimated in Docket No. 14-0573 and Mr. Larkin-Connolly ignores the additional federal and state safety regulations that went into effect after the Commission approved Rider QIP in Docket No. 14-0573. AIC asserts, thus, there is no basis for Mr. Larkin-Connolly to recommend the Commission limit QIP investment levels based on investment levels estimated in Docket No. 14-0573.

AIC points out that, moreover, the record is devoid of any evidence challenging the prudence or reasonableness of any specific project—in fact, Mr. Larkin-Connolly readily admits that he did not engage in a detailed review of each category of QIP investment. AIC states that rather than challenging any individual project, Mr. Larkin-Connolly seems to be arguing that the Company has acted improperly by pursuing too many prudent and reasonable projects without informing the Commission.

AIC asserts that Mr. Larkin-Connolly's claim is baseless. The Commission has frequently reviewed and considered AIC's QIP investments after the initial cost estimates presented in Docket No. 14-0573. After receiving approval of Rider QIP, the Company subsequently apprised the Commission of its QIP investments by publicly filing four annual QIP updates, three general natural gas rate cases, including this docket, four reconciliations for Rider QIP, and two requests for certificate of public convenience and necessity for natural gas transmission lines. Consequently, the AG claims that AIC was not transparent with its QIP investment plans is unfounded.

Mr. Larkin-Connolly contends AIC is proposing capital investments, not out of any operational need, but rather to increase earnings for the benefit of shareholders. He also claims AIC's increased investment is to the detriment to customers since the increased level of investment materially affect customer bills. AIC argues that the record, however, is devoid of any support for these contentions.

AIC explains that the AG's case rests on its objection to the fact that Illinois' constructive regulatory environment allows the Company to accelerate its ability to charge customers for the investment. Mr. Larkin-Connolly characterizes the elimination of regulatory lag to recover QIP investment through Rider QIP as a negative for customers and a benefit for shareholders because it "eliminates many of the risks associated with equity capital." The AG suggests the Commission find that a rate mechanism to recover prudent and reasonable investment related to safety and reliability in order to serve customers is unfair. AIC notes that the AG, however, has not provided any evidence as to why it is reasonable for customers to be entitled to denying investors a timely return on a reasonable and prudent investment related to safety and reliability.

AIC further notes that, Rider QIP does not eliminate AIC's risks associated with investment in utility plant. AIC explains that any investment AIC makes is subject to Commission review for prudence and reasonableness, and thus subject to disallowance. Customers only compensate shareholders for the prudent and reasonable investment serving them. The Act supports a constructive regulatory environment, and the Act balances the shareholders right to earn a fair return with customers' right to receive safe and reliable service; hence regulatory stability is created for both shareholder and customers. AIC concludes, consequently, Mr. Larkin-Connolly's arguments are unfounded, and his transparent and baseless attempt to twist AIC's characterization of

the Illinois regulatory environment as constructive into some sort of admission that the utility gets unfairly compensated should be rejected for what it is: fiction.

AIC asserts that Mr. Larkin-Connolly continues to perpetuate his fictional narrative by claiming AIC's investment in its natural gas system is driven by the fact the Company can recover the investments under Rider QIP. AIC notes that Mr. Larkin-Connolly, however, does not dispute that the selected projects will strengthen the safety and reliability of its natural gas system and comply with transmission pipeline safety regulations. Mr. Larkin-Connolly acknowledges AIC is obligated to comply with pipeline safety regulations in his testimony. Mr. Larkin-Connolly acknowledges these regulations, and in fact, he provides a history of the notice of proposed rulemaking that was issued by Pipeline and Hazardous Materials Safety Administration ("PHMSA") in April 2016 and that went into effect on July 1, 2020.

AIC argues that Mr. Larkin-Connolly misses the mark. Mr. Larkin-Connolly emphasizes that operators "are not officially required to complete this reconfirmation process until 2035." AG Ex. 2.0 at 23. He then argues that AIC has not justified the projects because the Company provides a general explanation for why AIC is completing projects outlined in the Schedule F-4. He claims that the Company can pursue these projects over the next 15 years to ensure compliance and implies AIC is undertaking these projects now because the costs can be recovered through Rider QIP. AIC explains that regardless of the ability to recover QIP investment through Rider QIP, AIC must complete projects to comply with the transmission regulations on the Maximum Allowable Operating Pressure ("MAOP") reconfirmation, as well as other regulations regarding materials, records, and integrity assessments, in order to strengthen the safety and reliability of the system.

As noted previously, AIC selected projects that strengthen the safety and reliability of its natural gas system and comply with transmission pipeline safety regulations, and as a result, customers benefit from a safer and more reliable natural gas system. AIC notes that while it is true the QIP statute encourages utilities to invest in the natural gas systems in Illinois to modernize and improve safety and reliability, regardless of the ability to recover costs through Rider QIP, Mr. Larkin-Connolly agrees AIC must perform MAOP reconfirmation projects to comply with the regulations. Despite these requirements, Mr. Larkin-Connolly suggests the Company does not need to reconfirm the MAOP on transmission pipelines at the speed and cost in this docket since the Company has 15 years to comply with the regulations.

In response, AIC notes that it has 18,430 miles of transmission and distribution pipeline. PHMSA regulations require MAOP reconfirmation to be 50 % complete by July 3, 2028 and 100% complete by July 2, 2035, "or as soon as practicable." AIC asserts that it's unreasonable to expect AIC to reach 50% completion by 2028 without beginning its investments "as soon as practicable" under the rule. AIC notes that it is completing transmission investments in order to comply with the regulations and meet the first deadline in 2028. AIC has been clear with its intent to invest in its transmission system in its last general rate case in Docket No. 18-0463 as well as its annual QIP Plan updates and its QIP reconciliations. AIC argues that Mr. Larkin-Connolly's assertion the Company has not justified these projects is baseless.

AIC maintains that it is not a prudent or acceptable business practice to ignore the "as soon as practicable" compliance requirement or delay pipeline safety improvements based on a general deadline 15 years down the line if the safety and reliability of the system needs to be addressed today, within two years, or at any other time. AIC asserts that any arbitrary delay undermines the intent of the new regulations.

AIC states that Mr. Colyer testified new transmission regulations contain significant and comprehensive changes that require AIC to re-confirm the MAOP of certain transmission pipelines. PHMSA recognized the significance of these changes, the level of effort to comply with the new requirements, and that it would take many years for operators of transmission pipelines to reconfirm the MAOP. As a result, PHMSA requires operators to complete all actions required by the regulations as soon as practicable and at least 50% of the pipeline mileage by July 3, 2028. No other party or the AG disputes compliance is necessary. AIC notes that the AG is the only party advocating delays in compliance and strengthening safety and reliability of the gas system.

AIC states that the record demonstrates its transmission investments are consistent with the intent and requirements of the new PHMSA regulations as well as the existing transmission integrity regulations which promulgate the principle that threats to the integrity of a pipeline system are addressed as expeditiously as possible to minimize the risk to the public and strengthen safety and reliability. AIC asserts that delaying the transmission projects would increase project costs, unnecessarily postpone improvements in safety and reliability to the detriment of the public and our customers and jeopardize compliance with pipeline safety regulations.

Mr. Colyer also explained why it is reasonable for the Company to complete MAOP reconfirmation projects and replace associated pipelines with a higher risk of failure prior to completing a required PHMSA reconfirmation plan and prior to the 15 year deadline.

AIC further argues that AIC's capital investments have not adversely impacted customer bills. Mr. Larkin-Connolly contends that the Company's request to recover costs associated with capital projects will have a material adverse effect on customer bills. The data, however, shows the opposite. In 2014, the average cost per therm was \$1.016, while in 2018 it was lower: \$0.967 per therm. AIC asserts that from a customer affordability perspective, the past several years have been an opportune time to invest in safety, reliability, and modernization projects for the long-term benefit of AIC's customers.

AIC witness Goerss analyzed the customer bills over the last several years, and provided a chart showing the average residential rates from 2012 through 2019. AIC's average residential rates have been stable to declining over the entire period. AIC states that if there were any ideal time for the Company to be investing, it would be now, when residential rates have been relatively stable. Mr. Larkin-Connolly has it exactly backward: he recommends that the Company should defer investment, even though that could mean that the Company might be making necessary investments in a later period when gas rates are under upward pressure for reasons that are unknown now.

2018 QIP

The AG's proposed \$433 million adjustment relates to specific QIP investments either made or planned to be made relating to QIP. Mr. Larkin-Connolly proposes an

adjustment to remove 2018 QIP proposed to be included in the original cost determinations or approximately \$110 million in 2018 QIP investments.

As the Commission determined in AIC's last gas rate case, Docket No. 18-0463, QIP costs included in rate base in this proceeding are subject to review for prudence and reasonableness adjustments in the Company's annual QIP reconciliation proceedings. For 2018, that proceeding is the 2019 QIP Reconciliation. Accordingly, for recovery in gas base rates in this proceeding, the Company's evidence must support the reasonableness of the projects undertaken and costs incurred for the investment dollars at issue, which it does. The distinction between whether these investments are classified as QIP or non-QIP is not determinative for the purposes of setting base rates in this proceeding.

Nonetheless, AG witness Selvaggio recommends that an AdjNetQIP and AdjNetDep true-up is necessary in this docket if the Commission deems a portion or any of AIC's 2018 QIP investment imprudent in the 2019 QIP Reconciliation. The Commission should reject the AG's request to leave the record open in this docket for a possible true-up already addressed in the 2019 QIP Reconciliation. To the extent the Commission orders an adjustment in the 2019 QIP Reconciliation, Rider QIP is designed to adjust customer rates to account for the adjustment. The proper forum to handle any rate base adjustment is the Company's next rate case. Additionally, the AG cannot ignore the fact the Commission already approved the 2018 QIP investment level in AIC's last rate case, Docket No. 18-0463. The AG is collaterally attacking the Commission's Order in that docket.

AIC states that the fact that the AG's 2018 adjustment is unreasonable is not the only legal obstacle to its adoption. The adjustment to 2018 QIP investments also represents a collateral attack on the Commission's Final Order in Docket No. 18-0463. The AG overlooks the fact it was a party in Docket No. 18-0463 and the AG did not object to the QIP investment levels approved by the Commission. Specifically, the Commission approved the 2018 QIP investments in Docket No. 18-0463, wherein the Commission found the agreed QIP amount to be reasonable and approved AIC's requested \$177,812,155 of net forecasted investments. Docket No. 18-0463, Order at 4.

The time and the place for the AG to contest the 2018 QIP investment levels was in Docket No. 18-0463, but the AG failed to present any evidence in Docket No. 18-0463 establishing the unreasonableness of the 2018 QIP investment levels. The AG cannot collaterally attack the Commission's decision in this docket. Moreover, the AG failed to present any evidence in this docket that the 2018 QIP investment levels were unreasonable. Therefore, the Commission should reject the AG's proposed accounting adjustment for the 2018 QIP.

2019 QIP

AIC states that AG witness Selvaggio also presents quantification for Mr. Larkin-Connolly's adjustment to remove 2019 and 2020 QIP plant additions. The AG's adjustments for the alleged excess 2019 and 2020 QIP were combined and now are separated. The Company and AG disagree on the proposed calculation of the 2019 net QIP Investment included in base rates in Ameren Ex. 19.7. The AG, however, accepted

AIC's adjustment to update the 2019 net QIP Investment to actual cost for the purposes of this proceeding to narrow the issues.

AIC states that the AG recommends AIC make a compliance filing in this proceeding setting forth the AdjNetQIP and AdjNetDep components. AIC notes that the only case where this type of compliance filing would be needed is if the Commission's determination on the prudence and reasonableness of the actual 2019 QIP investments in Docket No. 20-0323 differ from the determination in this proceeding.

AIC disagrees with the AG's recommendation. The AG is suggesting an unreasonable and burdensome compliance filing. AIC argues that the AG's approach is unnecessary and requires the record to be open for years since the reconciliations for 2018-2020 would need to be completed prior to a compliance filing being made. AIC maintains that the AG fails to recognize the reconciliations do not have definitive deadlines for Commission action.

AIC points out that, more specifically, the "required" compliance filing is accommodated by the recommended ordering language regarding QIP amounts for AdjNetQIP and AdjNetDep included in base rates in this proceeding. To the extent the Commission agrees with the AG regarding any further adjustments to actual 2018, actual 2019, or forecasted 2020 QIP in this proceeding, the ordering language can be modified based on the Commission's findings. Second, any additional compliance filings after the Order in this proceeding are unnecessary and could create confusion to the extent amounts for AdjNetQIP and AdjNetDep differ from the amounts included in the Order. Third, unlike an Article XVI rate proceeding, an Article IX rate proceeding like this gas rate case does not have a built-in provision for a reconciliation and true-up of rates. Accordingly, any additional compliance filings in this proceeding related to QIP is unnecessary and provides no additional benefit to the record. AIC maintains that the QIP reconciliations are the appropriate forum to address any changes to AdjNetQIP and AdjNetDep in between gas rate cases.

2020 QIP

The AG and the Company agree the adjustment for excess 2020 QIP plant additions should not be combined with the adjustment for excess 2019 QIP plant additions. AIC and the AG disagree over the determination of the actual NetQIP used to calculate the AdjNetQIP.

The AG argues that new base rates resulting from this proceeding should become effective mid-January 2021, and on that date, the recovery of the costs related to the 2018-2020 QIP Plant additions as required by Rider QIP will be reduced to zero with respect to the Net QIP Investment that was transferred to rate base for recovery through base rates. The AG posits, through the Rider QIP Surcharge, customers will provide recovery of the costs related to the 2018-2020 QIP Plant additions through the effective date of the new base rates. The AG claims the depreciation expense recovered from ratepayers from January 1, 2021 through the effective date of the new base rates should be included in the determination of the actual NetQIP Investment to be used in the calculation of the AdjNetQIP and AdjNetDep. AG witness Selvaggio contends that if AIC prefers to not update the actual NetQIP balance through the date of the effective base

rates resulting from this proceeding, AIC should forgo the recovery of costs of the 2019 and 2020 QIP through the Rider QIP Surcharge in 2021.

AIC argues that the AG's position should be rejected. AIC explains that the test year for this proceeding is calendar year 2021, not mid-January 2021 through mid-January 2022. There is no mechanism in place to modify rate base, operating expenses, or depreciation expense on non-QIP January 2022 utility plant additions simply because the effective date of new rates is after January 1, 2021. AIC asserts that it is inconsistent to treat one subcomponent of the rate case with a different test year calculation than all other components of the rate case since this proposal violates the Commission's test year rules. Furthermore, AG witness Selvaggio's proposal would require the Commission to keep the record open in this proceeding unnecessarily.

AIC argues that, for the reasons outlined above, the Commission should reject the AG's proposed adjustment and associated accounting treatment.

b) AG's Position

The AG requests that the Commission remove \$109.95 million from rate base for 2018 and disallow \$123.28 million for 2019 and \$104.83 for 2020. AG IB at 19, *citing* AG Ex. 2.0 at 30-31. The AG asks that the Commission also remove AIC's 2021 plant additions from the unadjusted rate base "to prevent the possibility that the Company could potentially develop a 2021 investment program around the unadjusted and unsupported 2021 QIP budget on the mistaken assumption that the Commission approved spending in this docket." AG IB at 19-20, *citing* AG Ex. 2.0 at 32. The AG additionally asks that the Commission require AIC to report more information than it has in this rate case and in its natural gas annual QIP Plan update, filed in Docket No. 14-0573, such that the Commission may fully assess whether the Company's spending was reasonable, prudent, and in compliance with Section 9-220.3 of the Act.

The AG points out that AIC represented to the Commission in 2014 that it planned to spend an average of \$54.8 million on QIP additions, per year (Docket No. 14-0573), but that the Company now seeks to include in rate base more than three times that amount each year: \$183.97 million on QIP additions in 2018, \$200.59 million in 2019, and proposes \$183.49 million in 2020, and \$176.07 in 2021. AG IB at 12, *citing* AG Ex. 5.0 at 32. The AG asserts that AIC's descriptions provide no justification for the Company's drastic increase in QIP spending over the past five years. AG Ex. 2.0 at 11. The AG iterates that AIC's request here is the equivalent of a contractor providing a person with an estimate of \$50,000 for a project, and then – without sufficient explanation or want of accountability – charging that person nearly \$200,000. The AG contends AIC has not shown that its costs were properly prioritized, addressed safety and reliability concerns, and were reasonably or prudently incurred.

As part of AIC's 2018 QIP reconciliation proceeding, AG witness Larkin-Connolly used PHMSA data to compare AIC's leak rates to the leak rates of other gas utilities of comparable size to determine whether AIC's QIP investment was driven by leak levels or resulted in a reduction in leaks. Mr. Larkin-Connolly found in the 2019 QIP Reconciliation, and still holds now, that by some measures AIC "is operating one of the safest distribution systems in the country." AG Ex. 2.0 at 5-6. He also testified that between 2014 and 2018

“there has not been a significant change in the condition of AIC distribution or transmission systems that warrants a tripling of QIP expenditures.” AG Ex. 2.0 at 6.

The AG contests that while AIC claims that Mr. Larkin-Connolly’s use of safety data is somehow insufficient or that he relies too heavily on leak data, the Company refuses (and likewise fails) to provide data of its own to justify its meteoric spending. See *Id.* at 9-12; Ameren Ex. 33.0 at 7. The AG contends PHMSA leak reports here simply do not justify AIC’s need to triple its QIP spending, and that the record shows Ameren has only provided general statements about its project costs and categories for QIP spending, without explaining how individual projects were prioritized to address safety and reliability, how specific costs were incurred, or why the Company needed to undertake so many of these projects at the same time—rather than prioritizing and spreading projects over time. AG IB at 13, *citing* AG Ex. 5.0 at 32.

According to the AG, AIC’s spending increase is primarily the result of AIC’s extraordinary increase in MAOP pipeline replacements. See Ameren Ex. 21.4. AG witness Larkin-Connolly reviewed AIC’s QIP spending to determine the projects on which the Company increased its QIP investment levels from its proposed \$164 million spending from 2015-2017, to approximately \$1 billion by 2021. AG Ex. 2.0 at 12. He focused his review on the Company’s MAOP investments, because AIC has most significantly increased its spending in this category, as compared to other QIP categories. AG Ex. 2.0 at 19. The AG points out that AIC originally proposed that it would spend \$1.1 million on MAOP from 2015-2017, but has spent \$18.5 million in 2017 and “an average of \$101 million per year from 2018 to 2021.” AG Ex. 2.0 at 19. In total, “MAOP will account for more than half of QIP activities and a third of overall gas plant additions in 2020 and 2021.” AG Ex. 2.0 at 20.

The AG challenges AIC’s position that these investments are justified by changes to PHMSA’s MAOP rules. The AG asserts that this position is untenable because of the Company’s acknowledgement that these rules were not officially changed until 2019 (two years after the Company began to increase spending), and because AIC is not required to comply with the rules until July 2, 2035 “or as soon as practicable.” AIC IB at 28-29.

The AG refutes the Company’s argument that the “as soon as practical” language in these regulations justified AIC’s extreme jumps in MAOP spending, starting in 2017. Ameren Ex. 21.0 at 14. The AG asserts that AIC has not provided sufficient information to show that spreading MAOP spending over the next fifteen years would cause “unreasonable delay or added costs.” AG Ex. 5.0 at 10. As Mr. Larkin-Connolly notes, “[w]hen investments increase at an accelerated pace, causing rates to increase faster than customers’ salary and wages, utility services become less affordable. Conversely, a slower replacement rate based on prioritizing safety and reliability can maintain affordability by minimizing significant jumps in rates over a short period of time.” *Id.* at 18. The AG argues that steady, but gradual investment in MAOP, is most consistent with the fundamental regulatory goals of rate continuity and avoidance of rate shock. Because PHMSA has found that this investment can reasonably be made over thirty-five years, the AG asks the Commission to adopt their adjustment and likewise order that AIC be required to support its accelerated spending by more than mere reference to the rule (which was not yet effective in 2018).

The AG contends that AIC does not provide justification for why it chose to extraordinarily increase its QIP spending, nor why it chose replacement of transmission pipelines as its primary means of complying with MAOP, when PHMSA provides five compliance alternatives to replacement, including pressure tests, pressure reductions, and engineering assessments. AG Ex. 2.0 at 23, 27. The record shows that “it is impossible to make any determination on the prudence of these replacement projects that are being completed to establish MAOP without knowing how Ameren evaluated less costly, available alternatives.” AG Ex. 2.0 at 27. According to the AG, an increase of this extraordinary magnitude requires more explanation than a simple reference to a federal rule that was not adopted until 2019 and does not require compliance for fifteen years.

The AG argues that not only were the final rules not published until October 2019, two years after the Company began to ramp up its spending, but a reasonable response to the MAOP directive would have been to develop a strategic plan to properly prioritize investments and spread this spending over the next fifteen years to ensure that it complied with the rules without overburdening ratepayers. Further, the AG argues that MAOP rules have been under discussion since 2011, but that AIC estimated only \$1.1 million for MAOP in its 2014 Rider QIP filing. AG Ex. 5.0 at 11. AIC increased its MAOP spending by an average of \$101 million per year from 2018-2021 without sufficient explanation including whether it considered alternatives to replacement, conducted a comprehensive review of relevant plant, developed a comprehensive plan to address MAOP concerns, or prioritized investment or “ranked in the highest risk categories in the utility’s most recent Distribution Integrity Management Plan where removal or replacement is the remedial measure.” 220 ILCS 5/9-220.3(b).

Based on the 2019 PHMSA report, Mr. Larkin-Connolly estimates that the Company has approximately 137 miles of transmission pipelines that require reconfirmation under the MAOP regulations and that the Company is at or close to compliance with the regulations. AG Ex. 5.0 at 14. The AG argues that the Company, rather than provide sufficient data, claims only that Mr. Larkin-Connolly’s analysis is based on incomplete data. Ameren Ex. 21.0 at 16. The AG challenges the Company’s claim, asserting that if Mr. Larkin-Connolly’s estimate is based on incomplete data, it is because the Company failed to provide complete data to justify its extraordinary increase in MAOP spending. AG Ex. 5.0 at 13.

The AG does not doubt that some of AIC’s investments will be needed within the next fifteen to twenty years. However, the AG contends Ameren has not provided sufficient information to support its claim that it needed to drastically increase MAOP spending by 10,000% at ratepayer expense, starting in 2017. AG Ex. 5.0 at 10. Commission rules require that a utility prioritize its QIP investments based on the safety and reliability of the Company’s infrastructure. 83 Ill. Adm. Code 556.70(b). The AG argues that based on the deficient record before this Commission, it is impossible to discern how, or even if, AIC prioritized spending because it “has failed (1) to produce a plan for addressing MAOP pursuant to federal regulations, (2) to explain its greatly increased costs in 2018, 2019, and 2020, or (3) to identify current system safety and reliability needs that justify the rate at which replacements are being completed.” AG Ex. 5.0 at 10.

The AG disputes the Company's attempts to justify its plan by stating the PHMSA rules do not require AIC to submit a MAOP compliance plan until 2021. This federal timeline recognizes that a comprehensive MAOP plan is necessary to address this issue in a reasonable, prudent and well-organized manner. Yet the Company spent \$281.5 million on MAOP investments, without first adopting a strategic investment plan. Ameren Ex. 21.0 at 20. The AG argues that spending such large amounts without a plan and without prioritizing investments based on safety and reliability is not reasonable and prudent. The AG argues the Commission should require a plan so that the public is assured that AIC's MAOP investments are reasonably and prudently managed, and that no reasonable person or company would accept such a huge increase in spending without a plan to assure that the Company prioritizes spending based on safety and reliability. 220 ILCS 5/9-220.3(d)(1) and (g); 83 Ill. Adm. Code 556.70(b). The AG argues that a MAOP budget that has jumped by nearly 10,000% without a comprehensive spending plan should not be acceptable to the Commission.

In addition, the AG points out that MAOP investments account for eight of AIC's twelve most expensive projects for future test year 2021 (totaling \$186.55 million), including the Company's five most expensive projects (totaling \$140.57 million). Ameren Ex. 21.4. The AG identified and highlighted AIC's use of identical, vague statements to justify \$186.55 million in 2021 test year MAOP for five of its most expensive projects. The AG argues that the identical, vague statements further evidences AIC's failure to explain how projects were prioritized based on safety and reliability or how project costs were incurred, and thus does not adequately explain the Company's drastic increases in QIP investments. The AG contends that this is inconsistent with the Act's requirement that investor-owned utilities reasonably and prudently spend ratepayer funds. See 220 ILCS 5/9-220.3(e)(2).

According to the AG, AIC's reasons for its increases in investment amount only to a timeline and general descriptions of the PHMSA regulations and conclusory statements, such as "with approximately 1,250 miles of transmission and vintages of pipelines dating back to the 1930s, AIC concluded that it would take many years to complete MAOP reconfirmation." AIC IB at 31. Despite specifically citing the need to replace pipelines dating back to the 1930s, the AG points out that replacements of 1930s infrastructure only account for two of the Company's twelve most expensive projects, while the replacements of 1950s and 1960s pipelines account for six of these projects. Ameren Ex. 21.4. The AG argues AIC has not shown why it was necessary to replace six 1950s and 1960s pipelines in the same year it only replaced two 1930s pipelines, despite a two-to-three-decade age difference.

Absent proof of extenuating circumstances, or some other sufficient justification, the AG argues the Commission should assume that AIC's Docket No. 14-0573 Rider QIP plan unreasonably and imprudently spent ratepayer funds when it radically departed from its plan, and that it should adopt the AG's proposed disallowances to prevent AIC from recovering unreasonable, excess QIP spending at ratepayer expense.

The AG contends AIC cannot shift its statutory burden of proving reasonableness and prudence to the AG, or any other party. The AG points out that AIC attempts to shift the Company's burden to the AG by stating the AG has "not provided any evidence as to why it is reasonable for customers to be entitled to denying investors a timely return on a

reasonable and prudent investment related to safety and reliability.” AIC IB at 27. The AG has not suggested that AIC’s shareholders are prohibited from recovering return on reasonably and prudently incurred investments that prioritize safety and reliability, so long as AIC actually shows that its plant additions were reasonably and prudently incurred and appropriately prioritized projects. AG IB at 19-20. The AG asserts that it appears AIC believes that all it has to do is say its investments are for safety and reliability to demonstrate compliance. The AG argues AIC’s conclusory statements fall short, and that it cannot pass its statutory burden onto them or other parties.

The AG asserts they have shown that AIC’s purported justifications are hollow and lack the detail necessary to meet its burden. A finding of imprudence and unreasonableness requires substantial evidence, and this “more than a mere scintilla,” and while “it does not have to rise to the level of a preponderance of the evidence,” “[i]t is evidence that a reasoning mind would accept as sufficient to support a particular conclusion.” *Commonwealth Edison Co. v. Ill. Commerce Comm’n*, 405 Ill. App. 3d 389, 398 (2d Dist. 2010). The AG asserts that where a utility has not justified its costs, as AIC has failed to do here, it has not shown them to be reasonable and prudent. *Ill. Power Co. v. Ill. Commerce Comm’n*, 245 Ill. App. 3d 367, 371 (3d Dist. 1993). Based on the deficient record evidence, the AG argues that any reasonable person would find the lack of specific justification for an increase of 10,000% from \$1 million to more than \$100 million for average yearly MAOP spending and the lack of a plan to address MAOP issues for more than 18,000 miles of pipe are both signs of unreasonable and imprudent management and spending.

The AG’s proposed disallowances are consistent with the plain language of the Act and relevant case law. The AG argues that AIC mischaracterizes the AG’s argument when it contends that the AG’s proposed disallowances are based on “false claims that QIP investment was limited by the Commission’s approval of Rider QIP” or that the AG claims “AIC is undertaking too many reasonable and prudent projects.” AIC IB at 22. The AG argues this ignores the fundamental principles underlying its proposed disallowances.

The Act places the burden of proving the reasonableness and prudence of QIP spending on the utility. 220 ILCS 5/9-220.3(e)(2). Section 9-220.3 requires that utilities prioritize spending based on safety and reliability and spend reasonably and prudently within QIP spending categories. 220 ILCS 5/9-220.3(d)(2) and (e)(2). The AG does not argue that AIC’s spending is unlawful because its spending was limited by its representations to the Commission about its QIP spending plan. Rather, the AG contends AIC’s spending is unreasonable because AIC has failed to provide a plan or sufficient detail explaining why the Company’s spending deviates so radically from what it told the Commission and the public it would spend.

Moreover, the AG contends AIC avoids justifying its QIP expenses by stating that its spending is only limited to the rate caps provided in Section 9-220.3(d)(1) and (g) of the Act. The AG argues that Section 9-220.3 and the rate cap do not limit Commission oversight or extinguish a utility’s duty to prove that its expenses are reasonably and prudently incurred, or that it prioritized spending based on safety and reliability. *People of the State of Ill. v. Ill. Commerce Comm’n and The Peoples Gas Light and Coke Co.*, 2019 IL App (1st) 180679-U (1st Dist. 2019) (hereafter “PGL Appellate Order”). In the PGL Appellate Order, the court held that Section 9-220.3 of the Act limits the

Commission's authority to set preemptive rate caps prior to Rider QIP approval, but that the Commission may review and disallow QIP expenses that it finds imprudent and unreasonable during reconciliation. *Id.* at 25-26.

The AG acknowledges that rate cases and reconciliation proceedings are meant to complement each other. The AG thus suggests that if the Commission adopts their proposed disallowances, that those disallowances each year be subject to review and adjustment in the corresponding year's reconciliation. These adjustments would then be accounted for in the Company's AdjNetQIP and AdjNetDep. AG Ex. 1.0 at 9. The AG argues that this process ensures that consumers are only charged for the costs that AIC reasonably and prudently incurs, and that the Commission's decisions in QIP reconciliations and general rate proceedings complement each other.

The AG asserts that Section 9-220.3 of the Act does not limit the Commission's power to regulate AIC to ensure that the Company does not unreasonably spend ratepayer funds. According to the AG, the Company erroneously asserts its belief that it is not required to prioritize spending or ensure that costs are reasonably and prudently incurred. The AG contends that AIC failed to tell the Commission that it would increase spending by more than three times per year, and that it failed to inform the Commission of an increase in MAOP spending by nearly 10,000%. As such, the AG asserts the Commission should adopt and approve their proposed disallowances because these disallowances are most consistent with the Act, case law, and AIC's estimated Rider QIP approval docket spending plan in Docket No. 14-0573, while Ameren's actual spending represents a radical departure from any standard of reasonableness.

For the foregoing reasons, the AG requests the Commission adopt their proposed adjustments. And for the foregoing reasons, the AG additionally requires AIC to report more information than it has in this rate case and in its Natural Gas Annual QIP Plan update, filed in Docket No. 14-0573, such that the Commission may fully assess whether the Company's spending is reasonable, prudent, and in compliance with Section 9-220.3 of the Act.

The AG fundamentally disagrees on the information the Company must provide to support the Company's QIP spending. The AG argues that standard rate case filing requirements are not sufficient to demonstrate that AIC's QIP spending is reasonable and prudent, or that its investments comply with Section 9-220.3 because AIC has consistently spent far more on QIP investments than it originally represented to the Commission and has refused to address the AG's legitimate concerns about Company excesses. The AG notes, for example, that the Company has not identified the scope of its MAOP program or provided a projected timeline for project completion, an explanation how projects are prioritized based on safety and reliability, the scope of all QIP replacement work, evidence of system conditions showing that investment is needed to address leaks or other safety concerns, or other relevant information. AG Ex. 5.0 at 123-126.

The AG points out that in other states, utilities have informed their respective commissions when costs or the scope of their QIP programs change. Mr. Larkin-Connolly provided record evidence from Maryland and Massachusetts where a utility informed its respective commission of a material change in plans, including the reason for the change.

AG Ex. 5.0 at 20-21; AG Ex. 5.1, 5.2. The AG asserts that the Commission is entitled to equivalent information whenever a utility believes that a major expansion of QIP spending is warranted, such as the sample provided by Mr. Larkin-Connolly in his rebuttal testimony. AG Ex. 5.0 at 19.

According to the AG, AIC's filing provides nothing akin to what is provided by utilities in other states identified by Mr. Larkin-Connolly that would inform the Commission of the Company's increased scope or costs of its QIP program and other investments. The AG argues AIC presents only "an amalgamation of generic gas infrastructure terms that could essentially be used by any operator of gas distribution and transmission systems to describe their capital program." AG Ex. 2.0 at 12. Indeed, the testimony in this case and in AIC's last gas rate case – when presented side-by-side – show that AIC did not change one word despite a 38% increase in QIP investment and depreciation, and a 24% increase in other rate base investment and depreciation, across only two years. AG Ex. 2.0 at 13, Ameren Ex. 1.0 at 12. The AG argues that the Commission should not accept AIC's pro forma explanations for its spending because these are insufficient to satisfy its statutory burden. The AG argues the Commission cannot adequately assess the reasonableness of AIC's QIP projects based on the deficient record evidence. 220 ILCS 5/9-220.3(e)(2). The AG therefore requests the Commission require AIC to provide additional reporting such that the Commission may fully assess whether the Company's spending is reasonable, prudent, and in compliance with Section 9-220.3 of the Act.

c) Commission Analysis and Conclusion

AIC provides project specific descriptions of its QIP capital investments. AIC submitted the required schedules, forms and descriptions. AIC's evidence is comparable to what it has supplied to the Commission in the past. In this proceeding, the AG, in its opinion, does not find AIC's descriptions adequate and describes them as pro forma. Primarily, however, the AG challenges the increase in QIP spending in general.

The Commission shares the AG's concerns that QIP investments should not adversely impact customers' rates. However, AIC demonstrated that from 2012 through 2019 AIC's rates remained stable or declined overall. The AG does not address the proposed projects identified by the Company and elaborate on why the investments on those specific projects are imprudent. AIC gave reasoned explanations on the necessity of the QIP investment levels to comply with PHMSA's MAOP reconfirmation requirements to address high risk infrastructure. Nothing the AG argues supports any contention that the QIP projects are not necessary for the safety and reliability of the Company's system. In fact, the Commission notes that the AG concedes that the proposed QIP investments will eventually need to be completed.

The Commission is further not persuaded by any argument that the Company is somehow limited in its spending based on estimates of projected investment it gave in the Rider QIP approval docket, Docket No. 14-0573. Spending levels in QIP investments are bound to change over time. As AIC notes, the Company estimated expenditures of about \$58 million for 2016 QIP, whereas the actual amount was \$81.8 million. This amount was reviewed in Docket No. 17-0134 and found to be reasonable and prudent.

The Commission agrees with the AG that any utility should have a comprehensive spending plan and provide clear descriptions of QIP investments. However, it is not clear from the record what level of description or detail the AG would consider adequate in making any determination of reasonableness and prudence. For the purposes of this docket, the Commission declines to deny the costs incurred to comply with safety regulations. The AG's extensive adjustment to remove \$433 million in QIP spending from base rates is not justified by the record and it is rejected.

The prudence and reasonableness of AIC's 2018 QIP is currently pending in the 2019 QIP Reconciliation. The prudence and reasonableness of AIC's 2019 and 2020 QIP should be reviewed in the annual QIP proceedings.

3. Gas-Only Employee Headcount/Vacancy Costs (see III.B.4)

This contested issue is addressed in Section III.B.4 of this Order.

4. Pension and OPEB Expense

a) AIC's Position

AIC states that in February 2020, it received a forecast from the Company's actuary for 2020 and 2021 pension and OPEB costs, on which it based its initial proposed revenue requirement in this case. As it does every year, the Company received a new forecast dated August 13, 2020, and provided Staff with the August actuarial reports, per data request TEE 7.04, where Staff requested that the Company provide all other actuarial reports supporting Pension and OPEB costs as they become available. In an April 6, 2020 response to the original request, the Company committed to reflecting a change in revenue requirement in its rebuttal or surrebuttal filing if more current actuarial reports were received: "The Company will provide any updates or later versions of actuarial reports supporting AIC's Pension and OPEB costs up until the time of the Company's Surrebuttal Filing, and will calculate and include the changes, plus or minus, in Rebuttal or Surrebuttal Revenue Requirement."

AIC explains that the Company calculated the resulting change in test year pension and OPEB expense from the February forecast used to calculate the initial gas revenue requirement. AIC's calculations included an adjustment for the differences in service and non-service costs for AIC and for Ameren Services Company ("AMS") and applies the AIC gas percentage allocation to determine the change in AIC jurisdictional gas expense. AIC further explains that service costs are further split between O&M and capital, and for the capitalized portion, half of the total is included in rate base with derivative adjustments for depreciation expense, depreciation reserve, and ADIT.

AIC argues that the Commission should approve AIC's 2020 and 2021 pension and OPEB costs, as reflected in Ameren Ex. 32.3. AIC notes that such approval is consistent with previous Commission decisions adopting adjustments to reflect newer pension and OPEB expense forecasts that used updated actuarial valuation and assumptions, *Ameren III. Co.*, Docket No. 13-0192, Order at 21 (Dec. 18, 2013), and the finding in Docket No. 18-0463 that use of the August 2019 pension and OPEB forecast to set pension and OPEB expense was reasonable. *Ameren III. Co.*, Docket No. 18-0463, Order at 7 (Nov. 1, 2018); see also *Cent. Ill. Light Co. d/b/a Ameren CILCO*, Dockets 09-

0306 (Cons.), Order on Reh'g at 69 (Nov. 4, 2010) (finding that most recent July 2009 actuarial report should be used to establish pension and OPEB expense).

b) Staff's Position

Staff notes that in surrebuttal testimony filed on August 28, 2020, the Company proposed to update its Pension and OPEB costs based on an August 13, 2020, actuarial update which impacted both expenses and rate base in the revenue requirement.

Staff contends that the timing of this adjustment to increase the revenue requirement by over \$4 million (See Appendix Schedule 5) is most certainly prejudicial to the parties in this case. The actuarial update is dated August 13, 2020. Staff and Intervenor rebuttal testimony was filed on August 19, 2020. Staff first became aware of this update on August 26, 2020, when the Company filed its supplemental response to Staff data request TEE 7.04S, followed by Company surrebuttal testimony filed on August 28, 2020. During this same time period, most parties in this case were also simultaneously preparing for the September 2, 2020, evidentiary hearing in the Ameren Formula Rate Update case in Docket No. 20-0381.

Notwithstanding the tardiness of this information being made available to the parties, Staff is cognizant of the Commission's history of reflecting the most current information for pension and OPEB costs in the test year revenue requirement. Having now reviewed the information provided by the Company in support of its adjustment, Staff does not contest the adjustment to Pension and OPEB update proposed by the Company.

However, Staff recommends that the Company be put on notice that adjustments proposed for the first time in surrebuttal testimony are not looked upon favorably by the Commission and all efforts should be made to not introduce new information in surrebuttal testimony. The practice of providing new evidence in surrebuttal testimony is not something new with AIC. The Commission has previously put AIC on notice for introducing new information in surrebuttal testimony. In the Final Order in Docket No. 07-0585 (Cons.), wherein AIC provided new evidence in its surrebuttal testimony, the Commission did not look favorably on that practice and accepted Staff's adjustment to decrease plant in service. See *AmerenCILCO*, Docket No. 07-0585 (Cons.), Order at 44 (Sept. 24, 2008).

c) Commission Analysis and Conclusion

The Commission agrees that AIC should refrain from proposing new adjustments in surrebuttal testimony. The Commission appreciates Staff's rush to review the updated actuarial forecast. Staff does not object to the adjustment. Therefore, the Commission approves AIC's adjustment to reflect the newer actuarial forecast dated August 13, 2020.

5. Original Cost Determination

a) AIC's Position

AIC notes that as Staff witness Ebrey explains, AIC is required to preserve records associated with an original cost determination pursuant to 83 Ill. Adm. Code 510. The most recent calendar year actual data is as of December 31, 2018. AIC recommended that the Commission conclude and make a finding in the Order in this proceeding that AIC's plant balances at December 31, 2018, as shown on Ameren Exhibit 3.1, be

approved for purposes of an original cost determination. AIC explains that Staff recommended, and AIC agreed, that the Commission conclude and make a finding in the Final Order in this proceeding that the Company's December 31, 2018, plant balance of \$3,077,015,000, as reflected on Company's Ameren Exhibit 3.1, be approved for purposes of an original cost determination, subject to any adjustments ordered by the Commission in this proceeding. Specifically, the recommended language is:

It is further ordered that the \$3,077,015,000 original cost of plant for Ameren Illinois Company at December 31, 2018, as presented in Ameren Exhibit 3.1, is unconditionally approved as the original cost of plant.

AIC states that the AG proposes that if the Order in the 2019 QIP Reconciliation is not yet entered before an Order is entered in this proceeding, the Order in this proceeding cannot approve an unconditional final original cost determination for the period after December 31, 2017 because the review and reconciliation of the 2018 plant investment will not be final. However, the AG contends it may be possible for the Commission to enter a "conditional" original cost determination at December 31, 2018 that is subject to a reasonableness and prudence determination in the 2019 QIP Reconciliation and the resolution of any appeals.

AIC argues that the proposal for a "conditional" Original Cost Determination should be rejected. AIC explains that as indicated, the purpose of an original cost determination is to define certain record keeping obligations of the utility. The original cost determination does not impact the revenue requirement or prohibit adjustments, if any, in the 2019 QIP Reconciliation. Thus, the Order in this proceeding can approve an original cost determination as of December 31, 2018, based on the agreed to recommendation of Staff and the Company in this proceeding. AIC asserts that the impact, if any, on AIC's original cost of utility plant in service based on findings in the 2019 QIP Reconciliation or any other docketed proceeding orders related to AIC's gas utility plant in service as of December 31, 2018 can be addressed in a future AIC gas rate case.

b) Staff's Position

Staff argues that the Commission should approve the following language for an Original Cost Determination as of December 31, 2018, agreed to by Staff and the Company:

It is further ordered that the \$3,077,015,000 original cost of plant for Ameren Illinois Company at December 31, 2018, as presented in Ameren Exhibit 3.1, is unconditionally approved as the original cost of plant.

AG witness Selvaggio disagrees with this recommendation stating that until an order is entered in the 2019 AIP Reconciliation, and all opportunities for appeal are exhausted by the time an Order is entered in this proceeding, the Commission cannot make an original cost determination for plant through December 31, 2018, in this proceeding. As an alternative, AG witness Selvaggio proposes that a conditional original cost determination could be approved, subject to the Final Order and any appeals in the

2019 QIP Reconciliation. AG witness Selvaggio's main concern appears to be the retention of records supporting the 2018 QIP plant additions. AG Ex. 4.0 at 7-8.

Both Staff and the Company agree that any impact on the Original Cost of Plant from any other proceeding can be addressed in the Company's next gas rate case. Therefore, the agreed-upon language should be adopted by the Commission.

c) AG's Position

The AG requests the Commission order that its approval of any original cost determination in this docket be expressly identified as conditional, and subject to the Commission's review for disallowances in the 2019 QIP Reconciliation, unless the Commission issues an Order in that parallel proceeding and that matter is closed to appeal prior to the Commission's Order in the instant case. This is because the AG's requested adjustment in the 2019 QIP Reconciliation may have a significant impact on this matter; the requested adjustment represents over 60% of net QIP plant additions in 2018 (\$177.2 million) and over 40% of total plant additions requested in this docket for the same year (\$265.911 million). *Id.*, citing AG Ex. 4.0 at 7. The AG disagrees with AIC's and Staff's request which seeks the Commission's approval of a final original cost determination that is unconditional, leaving the impact of the 2019 QIP Reconciliation – no matter how large and substantial – for a future AIC gas rate case.

The AG argues that while AIC and Staff indicate that there is agreement that "any impact on the Original Cost of Plant from any other proceeding can be addressed in the Company's next gas rate case" (Staff IB at 8), neither party has substantively addressed why an unconditional original cost determination would be preferable to the AG's recommendation, which is most consistent with the intent behind approving an original cost determination. The AG asserts that by its plain definition, an "unconditional" approval by the Commission here would mean that the Company's plant balance as of December 31, 2018 is authorized, without further conditions, or in other words, *without allowance for change in a future gas rate case*. Despite this possibility, the AG contends AIC and Staff offer no explanation about how the Commission's Order in the 2019 QIP Reconciliation would impact an unconditional original cost determination in a future gas rate case, besides stating that there is an agreement. Absent such information, the AG argues that its approach to the Commission's Order is most consistent with the intent behind approving an original cost determination.

d) Commission Analysis and Conclusion

The AG recommends that the Commission not make an original cost determination in this proceeding pending an outcome of the 2019 QIP Reconciliation and all opportunities for appeal are exhausted. In the alternative, the AG recommends that the Commission only approve a conditional original cost determination. The Commission agrees with AIC and Staff that an original cost determination should be made in this proceeding. An original cost determination will mandate AIC's preservation of records pursuant to Appendix A to 83 Ill. Adm. Code 510. Furthermore, making an original cost determination will not impact the revenue requirement or prohibit adjustments in the 2019 QIP Reconciliation. The Commission agrees with Staff and AIC that any impact on original cost of Utility Plant in Service may be addressed in a future AIC gas rate case. The Commission therefore approves the following language as agreed by Staff and AIC:

It is further ordered that the \$3,077,015,000 original cost of plant for Ameren Illinois Company at December 31, 2018, as presented in Ameren Exhibit 3.1, is unconditionally approved as the original cost of plant.

C. Recommended Rate Base

Based on the above determinations, the Commission finds that the rate base for AIC is hereby approved as shown in the Rate Base schedule (Schedule 3) in the Appendix to this Order.

III. OPERATING REVENUES AND EXPENSES

A. Uncontested Issues

1. Rate Case Expense

Section 9-229 of the Act requires the Commission to assess the justness and reasonableness of AIC's rate case expenses. 220 ILCS 5/9-229. The Commission's Part 288 Rules are intended to guide that assessment. 83 Ill. Adm. Code 288. Consistent with that authority, AIC submitted for the Commission's review record evidence supporting the justness and reasonableness of its expenses to prepare and litigate this proceeding. Specifically, AIC forecasted a \$2,569,720 level of rate case expense, which AIC proposed to amortize over two years, reflecting the anticipated period between the instant filing and AIC's next gas rate case filing.

The Commission has considered the costs expended by the Company to compensate attorneys and technical experts to prepare and litigate rate case proceedings and assesses that the amount included as rate case expense in the revenue requirement of \$1,284,860, amortized over two years, is just and reasonable.

The AG's proposed adjustment to the cost of AIC's lead-lag study is discussed in Section III.B.8 below.

2. Advertising Expense

Staff proposed an adjustment to remove from AIC's proposed revenue requirement certain 2021 test year forecasted advertising expenses. AIC accepted Staff's adjustment in part. AIC noted that the Company's forecasted advertising expense is based on 2019 actual information and AIC previously self-disallowed similar expenses for 2018. AIC further noted that charges for Hunton & Williams, which it previously self-disallowed, have been reinstated to be consistent with Staff's proposed adjustment in Docket No. 20-0381. Further, AIC modified the prior self-disallowance calculation to limit 2018 escalation at 2% for only two years, rather than three years, to align with Staff's adjustment and the Company's previously submitted workpapers.

The Commission finds that these agreed-upon adjustments to AIC's advertising expense reasonable and they are hereby approved.

3. Outside Professional Expenses

The AG proposed an adjustment to remove outside service expenses for Wright & Talisman that support the AIC electric operations. AIC accepted this adjustment.

Staff proposed an adjustment to remove forecast amounts that are derived from 2019 out of period costs and travel reimbursement costs for alcohol purchases by outside consultants. AIC accepted Staff's proposed adjustment to remove the cost of alcohol purchases but disagreed with Staff's recommendation to remove "out of period" charges, given that the starting point for forecasting non-labor expense was 2018, not 2019. Staff subsequently withdrew its proposed adjustment to remove out of period costs related to 2019.

The Commission finds that AIC's test year level of Outside Professional Expense, as adjusted by the AG and Staff and accepted by AIC, is reasonable and it is hereby approved.

4. Officer Benefits and Executive Perquisites

In direct testimony, Staff proposed an adjustment to remove forecasted costs for certain officer life insurance and financial planning benefits. In rebuttal testimony, Staff withdrew the adjustment based on evidence provided by AIC that the benefits are an ordinary component of executive compensation in the marketplace and benefit ratepayers.

Based on the record evidence provided by AIC, the Commission finds these costs, as accepted by Staff, reasonable and they are hereby approved.

5. Board of Director Expenses

In rebuttal testimony, Staff proposed an adjustment to remove non-compensation Board of Directors' charter flight expenses in the amount of \$160,824 from the requested operating expenses recorded to Account 921. AIC accepted the adjustment.

Staff's adjustment, as accepted by AIC, is reasonable and it is hereby approved.

6. Cancellation of Project J08PB

See Section II.A.6 of this Order.

7. Deferred Tax Expense

Staff proposed an adjustment to reflect a correction to decrease Deferred Income Tax Expense identified by Staff and AIC in discovery during the course of the proceeding. AIC accepted Staff's adjustment.

The Commission finds AIC's test year level of Deferred Tax Expense, as adjusted by Staff and accepted by AIC, reasonable and it is hereby approved.

8. Lobbying Expense

Staff proposed an adjustment to remove from AIC's test year revenue requirement certain forecasted lobbying expenses. AIC accepted Staff's adjustment.

The Commission finds Staff's adjustment, as accepted by AIC, reasonable and it is hereby approved.

9. Dues Expense

Staff proposed an adjustment to reduce AIC's forecasted 2021 dues expense for amounts that are unrelated to the provision of gas service or that relate to lobbying activities. AIC accepted Staff's adjustment.

The Commission finds AIC's test year level of Dues Expense, as adjusted by Staff and accepted by AIC, is reasonable and it is hereby approved.

10. Postage Expense

Staff proposed an adjustment to reduce AIC's 2021 test year forecasted postage expense based on prior years' actual costs and applying specific assumptions. AIC accepted Staff's adjustment based on a review of the source data used by Staff.

The Commission finds AIC's test year level of Postage Expense, as adjusted by Staff and accepted by AIC, reasonable and it is hereby approved.

11. Government Agency Fees Expense

Staff proposed an adjustment to reduce AIC's forecasted 2021 government agency fees expense based on information provided by AIC in discovery. AIC accepted Staff's adjustment.

The Commission finds AIC's test year level of Government Agency Fees Expense, as adjusted by Staff and accepted by AIC, reasonable and it is hereby approved.

12. Project J0DX1 Videos Expense

Staff proposed an adjustment to remove from the test year revenue requirement costs associated with training videos included in Project J0DX1 that AIC has erroneously recorded as expense. AIC accepted Staff's adjustment.

The Commission finds that Staff's adjustment, as accepted by AIC, is reasonable and it is hereby approved.

13. Cellular Service/Other Office Expenses

In rebuttal, AIC adjusted its proposed recovery of Office Supplies and Expenses to include reductions for cellular service, net of an adjustment proposed in Staff direct testimony. Staff accepted AIC's revised expense amount.

The Commission finds that AIC's test year level of Office Supplies and Expenses, as adjusted by Staff and accepted by AIC, is reasonable and it is hereby approved.

14. Fuel Expense

Staff proposed an adjustment to decrease fuel expense to reflect a revised level of expense agreed to by AIC in discovery. AIC accepted Staff's adjustment.

The Commission finds that AIC's test year level of Fuel Expense, as adjusted by Staff and accepted by AIC, is reasonable and it is hereby approved.

15. 2020/2021 General Plant Retirements Deferred Tax Expense

Staff and the AG proposed an adjustment to AIC's 2020 and 2021 General Plant Retirements to correct retirements that had been erroneously included with the electric general plant retirements. AIC accepted the adjustment.

Staff also proposed an adjustment for QIP Retirements, which the AG referred to as General Plant Retirements. AIC agreed with the AG's description of the adjustment as General Plant Retirements but agreed with Staff's calculation.

The Commission finds AIC's 2020/2021 General Plant Retirements Deferred Tax Expense, as adjusted by Staff and the AG and accepted by AIC, reasonable and it is hereby approved.

16. Asset Separation Project Adjustment – Depreciation

As discussed in Section II.A.3 above, AIC accepted Staff's adjustments to the Company's ASP to correct allocations and the inclusion of plant items no longer in use. Staff also proposed adjustments to the calculation of accumulated depreciation and depreciation expense associated with the Company's ASP. The Company accepted Staff's adjustment.

The Commission finds Staff's adjustments to AIC's Asset Separation Project, as accepted by AIC, reasonable and they are hereby approved.

17. Cloud Computing Expense

AG witness Selvaggio withdrew her direct testimony proposal to reclassify certain cloud computing software as capital rather than expense due to the Commission's withdrawal of its rulemaking related to the accounting for cloud computing costs.

The Commission finds it is reasonable to treat the cloud computing cost at issue as an expense.

B. Contested Issues

1. Charitable Contributions

a) AIC's Position

AIC notes that it makes charitable contributions to worthwhile causes in the Illinois communities in its service territory. AIC explains that, in general, contributions are made to non-profit organizations and local governments that are either located in the Ameren's footprint or provide services that will benefit Ameren customers and the decision to fund any particular applicant is based on its services, goals and financial needs, the benefit of the funding to communities in the Company's service territory, and the track record of the applicant in administering its programs and effectively utilizing the awarded grant funds.

AIC argues that the standard in Illinois for rate recovery of charitable contribution is Section 9-227 of the Act, which permits utilities to recover donations made "for the public welfare or for charitable scientific, religious or educational purposes, provided that such donations are reasonable in amount." 220 ILCS 5/9-227. AIC continues, stating that to determine which contributions satisfy that standard, Sections 285 and 325 of the

Illinois Administrative Code impose various filing requirements on utilities that seek recovery of the costs of donations as operating expenses through rates.

AIC states that in this proceeding, it seeks to recover the gas jurisdictional amount of the Company's budgeted 2021 charitable contributions, approximately \$1.56 million. AIC avers this represents an increase of approximately \$210,000 from the roughly \$1.35 million that the Commission approved for recovery in gas rates in Docket No. 18-0463 based on the Company's budgeted 2019 charitable contributions. AIC explains that the Company budgeted this increase in contributions for 2021 based on its history of supporting charitable and public welfare organizations and causes in its service territory, and the continuing high demand for financial support needed by non-profit organizations in the service territory.

AIC notes that Staff and the AG both proposed adjustments in direct testimony. Staff proposed an adjustment of approximately \$120,000 to forecasted 2021 charitable contributions expense based on an escalation of actual 2019 charitable contributions expense reducing Ameren's requested amount to roughly \$1.44 million. AIC proffers that the Company agreed to this adjustment in its rebuttal case to limit the number of contested issues. AIC states that this adjustment, if approved by the Commission, would constitute an increase of approximately \$90,000 above what the Company is presently collecting in gas rates for charitable contributions.

AIC states that the AG, however, proposes a larger adjustment to Ameren's forecasted 2021 charitable contribution expense, reducing the Company's requested amount to approximately \$1.25 million, which would exclude another \$190,000 from the Company's revenue requirement. AIC states that this additional adjustment would also mean that Ameren would recover about \$100,000 less in gas rates for charitable contributions than what it is presently collecting. AIC notes that the AG bases its adjustment on the gas allocated amount of the Company's actual 2019 charitable contributions and provides for no escalation in that amount for test year expense.

AIC states that in its direct case the AG offered a number of assertions in support of its adjustment, many of which were untrue or misleading. AIC argues that the AG claimed that the 2021 budgeted charitable contribution expense had not been "officially approved by the Company's Board of Directors." AIC asserts that that is not correct and the Company's Board of Directors approved the 2021 forecast, which included the 2021 budgeted charitable contribution expense, prior to this case being filed, as explained in its direct case. AIC states that secondly, the AG claimed that the Company had not determined how such an increase will be apportioned among recipients. AIC asserts that this is immaterial. The Company does not specifically budget and allocate its projected charitable funding by recipient and is continually accepting grant applications for charitable funding. AIC states that it does not predetermine how it will spend its budgeted amount more than a year in advance.

AIC states that the AG is incorrect in the assertion in its direct case that the Company's planned increase in charitable giving is "speculative." AIC maintains the amount is based on the Company's targeted charitable contributions for 2021 and it has the organizational resources (e.g., staffing, experience) to increase its contribution levels above 2019 actual spending to meet the targeted level for 2021. AIC also opines the

demand for charitable funding will increase because Illinois communities currently face many social and economic challenges, including challenges caused by COVID-19. AIC explains that the Company's community service non-profit partners are also trying to respond to and recover from COVID-19 and many of these local organizations have had to reduce their services due to challenges raising money in the current environment. AIC notes that even the AG admits that "[t]here may be an increased need for social services." AG Ex. 1.0 at 18.

AIC proffers that in addition to the expected increase in demand, it plans to analyze current market conditions and will direct funds where they can have the greatest benefit. AIC cites as an example, that it is considering intensifying its efforts to advance the principles of diversity, equity, and inclusion in its service territory, meaning charitable donations would be directed to organizations that work to achieve racial and social justice, drive economic development and job training, and promote positive change for impacted citizens. AIC asserts that the need for financial support for this cause, and others like it, has never been higher and Ameren intends to be a leader—both financially and through its time and talents.

AIC notes that the AG suggests that the Commission should look towards historical spending to determine its future charitable contributions. AIC asserts that a utility's historical spending should not act as a cap on recovery in a future test year case. AIC points out that historical spending can be a point of comparison to judge the reasonableness of budgeted expense, but the appropriateness of the comparison depends on whether the historical amounts are representative of the amount the utility expects to spend in the future period. AIC notes that in this instance, the contributions made in 2019 are not representative of the contributions that AIC intends to make in 2021.

AIC argues that while the AG's support for its adjustment rests upon the contention that the Company has not yet funded the level of contribution previously approved by the Commission in Docket No. 18-0463, which may be true, that fact alone does not make the targeted 2021 funding unreasonable. AIC argues that to suggest that the Company consistently underspends the amount of charitable contribution expense recovered in gas rates based only on actual to budget 2019 spending is disingenuous. AIC avers that forecasting future charitable donations is based on a number of factors, including the economic conditions, job loss, furlough and losses of entire industries in local communities. AIC explains that it and other downstate business leaders will be asked to fill that gap and provide even more monetary support to these organizations to help them maintain their essential services.

AIC explains that requests for donations have increased in 2020 and through the end of July, the Company had already spent two thirds of its \$3.5 million contribution budget for 2020. AIC states that the Company expects demand to remain high in 2021.

AIC argues that for these reasons, the Company's requested amount of 2021 charitable contribution expense, as modified by acceptance of the Staff adjustment, is reasonable, and the Commission should reject the AG's additional adjustment to further lower this expense.

AIC notes that the AG also complains about the Company's actual 2018 spending but points out that Docket No. 18-0463 used a 2019 forecasted test year. Whatever

spending occurred in 2018 is not relevant to the AG's complaint that AIC did not spend the amount authorized in Docket No. 18-0463. AIC also points out that its formula rate case in Docket No. 20-0381 is recovering the Company's actual electric allocated charitable contribution expense in 2019 and that rate structure allows the Company to update its various costs from year-to-year, unlike in traditional ratemaking. AIC notes that the AG continues to argue in favor of its adjustment based on current unemployment levels in Illinois. But AIC asserts that the Company's contributions would directly help these struggling communities. AIC responds to the AG's argument that the Company should keep its gas rates as low as possible by stating that an adjustment of \$190,000 to the revenue requirement will not cause a material reduction to customers' bills, however, it would provide significant relief to local non-profit organizations serving the most vulnerable populations.

b) Staff's Position

Staff does not recommend that the Commission adopt the AG's proposed charitable contributions adjustment, arguing that the AG's proposed adjustment is unnecessary since the Company accepted the charitable contributions adjustment proposed by Staff.

Staff recounts that AIC witness Kennedy asserted the 2021 forecasted level of charitable contributions expense is not speculative because it is based on the Company's targeted giving level for 2021 and AIC has the resources to increase its giving above the 2019 level to meet the 2021 target. Ameren Ex. 26.0 at 17. Staff also explains that AIC witness Kennedy also asserted that AIC's historical level of giving should not be used to cap forecasted expense in a proceeding based on a future test year and that the Board of Directors has approved the targeted level of giving in 2021. *Id.* at 18-19.

Staff recommends the Commission decline to adopt the AG's proposed adjustment to reduce charitable contributions because the Company accepted Staff's adjustment to reduce charitable contributions expense for the 2021 test year, with modification, and also because Staff finds AIC witness Kennedy's additional arguments convincing.

c) AG's Position

The AG recommends the Commission reject AIC's request to increase the charge for its gas consumer charitable contributions allocation to \$1.441 million to reach a charitable contributions target of \$3.927 million because they allege facts showing that the Company has previously failed to spend the money allocated to it for charity. The AG asks that AIC's increase in charitable contributions be excluded from its gas operations because the Company has failed to demonstrate that it will spend its entire ratepayer-funded allocation.

The AG argues that the Company spent less than consumers supplied for its charitable contributions in 2018 and 2019—\$3,192,527 in 2018 (or 93.9%) and \$3,140,376 in 2019 (92.36%). AG Ex. 1.0 at 18-19. The AG recommends that the Commission reduce AIC's gas operations charitable contributions allocation to no more than \$1.248 million—an amount corresponding to its actual 2019 charitable contributions, see AG Ex. 4.1 Sch. C-4. The AG asserts that the Commission should not increase the

amount charged to consumers until such time that the Company proves that it has spent the charitable contribution amount funded by consumers.

The AG challenges AIC's assertion that it will spend the \$1.441 million it requests in 2021 because the Company has not offered any proof that it will. While AIC's Board of Directors approved the \$3.927 million charitable contributions target, the AG points out that the Board of Directors did not identify any recipients or develop plans for how to distribute this funding. AIC Ex. 26.0 at 17. The AG states that it does not doubt that AIC is consistently receiving applications for funding and contends that the issue is not applications, but AIC's history of failing to spend the money it receives from the public for charitable contributions. The AG iterates that AIC has not taken any corrective measures, like budgeting, that indicate that it will spend its full charitable contributions allocation going forward and without corrective measures in place, the AG argues the Commission should not increase charges to consumers for charitable contributions that historically have not been made.

Additionally, the AG further challenges AIC's assertion that it "has the organizational resources (e.g., staffing, experience) to increase its contribution levels above 2019 actual spending to meet the targeted level for 2021." *Id.* The AG contends that the Company would also have had the same level of "organizational resources" in past years and yet still failed to spend its entire charitable contributions allocation. According to the AG, this shows that AIC's organizational resources cannot be trusted to spend the amount paid by consumers for charitable contributions.

Further, the AG challenges AIC's argument that it should receive the \$1.441 million because the ongoing pandemic has increased need in its service area because in the past AIC has claimed that need is increasing but then failed to spend its charitable contributions allocation. *Id.* at 50-52.

The AG points out that towns across AIC's service area have double digit unemployment (AG Ex. 1.0 at 18) and that the Company could assist these communities by keeping its gas rates as low as possible and to fund additional charitable giving with shareholder funds. Finally, the AG challenges AIC's position that its failure to spend its charitable contributions in 2019 should not be used to forecast its future spending because spending from that year is not "representative of the contributions that AIC intends to make in 2021." AIC IB at 51. The AG argues that 2019 seems to be well representative of AIC's spending over time, and that AIC failed to spend its entire charitable contributions allocation in both 2019 and 2018. Moreover, the AG contends that AIC decreased its 2018 and 2019 spending compared to 2016 where it spent \$3.226 million on charitable contributions. AG Ex. 1.0 at 18.

The AG asks the Commission to reject AIC's request to increase the amount of charitable contributions charged to Ameren's gas ratepayers because the Company has failed to spend the amount that ratepayers have funded in the past, and because there is no plan or guarantee that the increased ratepayer funding will actually be spent on charitable purposes.

d) Commission Analysis and Conclusion

The Commission adopts AIC's and Staff's agreement to reduce the Company's forecasted charitable contributions expense by approximately \$120,000 to \$1.44 million and declines to adopt the AG's proposal to limit the Company's recovery to \$1.25 million.

Staff proposed an adjustment to the forecasted 2021 charitable contributions expense based on an escalation of actual 2019 charitable contributions expense. The Company agreed to this adjustment proposed by Staff. The AG proposes an additional reduction, which would result in AIC recovering \$103,000 less than what it presently collects for charitable contributions. The Commission recognizes the AG's argument that the Company's actual charitable contributions expense in 2019 did not meet the amount included in the 2019 forecast in Docket No. 18-0463 but does not find the 2021 forecasted charitable contribution expense unreasonable. AIC has explained that requests for donations have increased in 2020, and through the end of July AIC had already spent two-thirds of its 2020 budget for charitable contributions.

The Commission rejects the AG's proposal in part because it decreases the 2021 forecasted charitable contributions amount to less than the Company is currently receiving and the AG fails to show that a decrease in the charitable contributions amount is necessary when AIC expects that the requests for charitable contributions will increase.

The Commission also rejects the AG's proposal because it does not find the AG's argument convincing, that the sole predictor in future charitable contributions is the past year. However, the Commission finds it persuasive that AIC and Staff considered past contributions combined with economic conditions and community impact to reach an agreed charitable contributions amount. For these reasons, the Commission finds the amount agreed to by AIC and Staff reasonable.

2. Advertising (Voucher 3637279)

a) AIC's Position

AIC states that the Act mandates that gas utilities shall be allowed to recover advertising expenses in rates (220 ILCS 5/9-225(3)) and the categories of expense expressly recoverable under the Act include advertising that includes "safety measures", promotes "the use of energy efficient appliances, equipment or services", "encourages the off-peak usage of the service" and informs consumers how to "conserve energy" and "reduce peak demand." *Id.*

AIC notes that there are some exceptions, such as "political", "promotional" and "goodwill or institutional advertising" which are generally not recoverable. 220 ILCS 5/9-225(2). AIC suggests that political advertising is defined as "any advertising for the purpose of influencing public opinion with respect to legislative, administrative or electoral matters, or with respect to any controversial issue of public importance." 220 ILCS 5/9-225(1)(b). AIC identifies "promotional" advertising defined as "any advertising for the purpose of encouraging any person to select or use the service or additional service of a utility or the selection or installation of any appliance or equipment designed to use such utility's service." 220 ILCS 5/9-225(1)(c). AIC asserts that "goodwill or institutional advertising" is defined as "any advertising either on a local or national basis designed primarily to bring the utility's name before the general public in such a way as to improve

the image of the utility or to promote controversial issues for the utility or the industry.” 220 ILCS 5/9-225(1)(d). AIC opines that these types of expenses are only recoverable if the Commission finds them “to be in the best interest” of consumers or otherwise expressly authorized. 220 ILCS 5/9-225(2). AIC argues that “other” advertising expenses that do not fit into a specific category are also recoverable, provided they are not political, promotional, institutional, or goodwill. 220 ILCS 5/9-225(3).

AIC explains that for each traditional rate case (and formula rate update filing), Ameren prepares advertising workpapers for Staff pursuant to Section 295.40 of the Commission’s Rules and these workpapers include copies of the actual advertisements published in the calendar year prior to the filing. AIC states that the workpapers also include an excel file with detailed information on the expenses associated with those advertisements. Further, AIC explains that to prepare these workpapers for each rate filing, a team of Ameren personnel reviews each advertisement to confirm that the related expense is recoverable in rates and as a result of this review, Ameren identifies certain advertising expenses for disallowance. AIC notes that in its direct filing in this rate case, Ameren self-disallowed approximately \$184,000 in advertising expense based on its review of 2018 advertisements. AIC proffers that it also agreed to remove an additional \$6,000 based on Staff’s direct testimony and review of 2019 advertisements and an additional \$5,000 based on Staff’s rebuttal testimony.

AIC states that in a pair of recent formula rate update orders, the Commission has found that Ameren’s advertisements concerning the Company’s capital investments to maintain or improve system reliability are recoverable costs. In Docket Nos. 15-0305 and 16-0262, the Commission specifically found that advertisements about investments that Ameren was making under the EIMA were recoverable in rates. AIC asserts the Commission specifically found that “any goodwill engendering from these ads was ancillary to their intended purpose, which appears to be focused on increasing awareness of grid improvements and alerting customers to the EIMA reliability investments that Ameren is making.” *Ameren Ill. Co.*, Docket No. 16-0262, Order at 29 (Dec. 6, 2016); *Ameren Ill. Co.*, Docket No. 15-0305, Order at 47 (Dec. 9, 2015) (“[T]he record shows that the primary purpose of Ameren’s EIMA-related infrastructure improvement ad campaign is to educate customers, not to enhance the public image of Ameren Illinois despite any ancillary benefits of this kind.”).

AIC notes that in those cases, the Commission held that the reliability ads were “designed primarily to inform and engage customers on Ameren’s efforts to fulfill its EIMA investment requirements.” Docket No. 15-0305, Order at 47; Docket No. 16-0262, Order at 29 (“The Commission finds, as it did in Docket No. 15-0305, that these ads were designed primarily to educate customers.”). AIC avers the Commission also found that there was “a need for education with respect to how EIMA infrastructure improvement projects impact customers and believes it is important for Ameren customers to be informed of EIMA-related investments, their impact on system reliability, and other customer benefits involved.” Docket No. 16-0262, Order at 29. AIC states that the Commission considered “consumer education to be a critical component in the State’s efforts to modernize electrical infrastructure, with an emphasis on the importance of such education in constructing a 21st century grid for Illinois.” Docket No. 15-0305, Order at 48.

AIC explains that in these prior cases, the Commission also set forth the standard for determining whether an advertisement should be disallowed as goodwill or promotional advertising. First, “there must be sufficient evidence in the record on the ‘purpose’ or ‘design’ of the advertisement.” Docket No. 15-0305, Order at 46; Docket No. 16-0262, Order at 26. Second, “the party proposing the adjustment to a ‘goodwill’ advertisement must show that ‘the promotional aspect of the advertisement outweighs the message of the advertisement.’” Docket No. 15-0305, Order at 46; Docket No. 16-0262, Order at 27. AIC opines that the Commission explained the burden of proof that was on the party proposing an adjustment: “while the burden to establish the reasonableness of an expense is initially on the utility, it shifts to the party proposing the adjustment . . . to establish that the ads were ‘designed primarily’ to improve the image of the utility.” *Id.* AIC states the Commission also described an ad “designed primarily” as goodwill: “the record evidence must show that the main purpose of the challenged advertising was to promote the utility’s image, and the fact that the advertisement may provide a favorable impact to the utility’s image, if that is ancillary to the message, is not determinative.” Docket No. 16-0262, Order at 27.

AIC states that in this case, Staff proposes that the Commission disallow an additional \$162,000 in advertising expense that it considers promotional and goodwill advertising. AIC explains that this amount represents the allocated gas expense for voucher number 3637279. AIC says the costs at issue are production costs for three different broadcast and digital advertisements for television, web videos and radio that highlighted Ameren’s commitment to providing its customers with reliable service. AIC explains the invoiced amounts are the costs that Ameren paid its outside vendor, Hughes Leahy Karlovic (“HLK”) to create the concepts, storyboard the design, edit the scripts, and shoot and edit the advertisements. AIC continues, stating the advertisements included 30 second TV and radio commercials and 15 second online videos with localized variations per commercial. AIC argues the reliability messaging of the advertisements educated customers about system upgrades and directed customers to Ameren’s reliability website for more information on smart meters and reliability projects in specific areas of Ameren’s service territory.

AIC notes that Staff claimed that these advertisements seek “to increase customer satisfaction with Ameren Illinois system upgrades.” Staff conceded that the advertisements “focus on reliability messaging and education about how Ameren Illinois upgrades are positively affecting customers.” Staff Ex. 2.0 at 12. AIC opines that in Staff’s opinion though, they are still “primarily promotional and goodwill in nature.” *Id.* AIC argues that the evidence in the record, however, does not support Staff’s claim, and Staff has not demonstrated that the costs should be disallowed as goodwill.

AIC states that contrary to Staff’s assertions, the reliability advertisements associated with voucher number 3637279 were not designed primarily as goodwill. AIC asserts that the advertisements were designed to be dynamic and catch the eye of customers to draw them in with further information around reliability and infrastructure improvements. Their purpose was to educate and engage customers about improvements happening and take the action of visiting the Ameren reliability website to find out more information about system improvement projects in their area. AIC points to its witness Kennedy’s testimony stating, “[i]n tying infrastructure improvement information

to reliability with engaging and educational subject matter, the primary intent of the advertising is to encourage customers to take action by visiting our website or paying more attention to their energy usage.” Ameren Ex. 26.0 at 7.

The Company acknowledges that the design of the reliability advertisements at issue in this case uses a slightly different approach compared to the advertisements that the Commission reviewed in Docket Nos. 15-0305 and 16-0262. AIC notes that the advertisements at issue in those cases highlighted Ameren personnel and contractors as job sites installing the actual assets. AIC further notes that the advertisements in this case hit on the results of the reliability investments: safe and reliable service and real-time data to manage energy usage. AIC states the scripts also continue to highlight the installation of smart meters and other advanced technology as infrastructure improvements that benefit customers and the advertisements continue to direct customers to Ameren’s website for more information about specific upgrades in their area. AIC asserts that while the imagery in these advertisements may differ from other reliability advertisements that Ameren has published, the focus of the advertisements remains the same: inform Ameren’s customers about capital investments, their impact on system reliability, and the other customer benefits realized from the improvements. AIC argues that these reliability advertisements respond to the need that the Commission identified in Docket Nos. 15-0305 and 16-0262 for education with respect to how reliability investments impact customers. AIC maintains that for these reasons, the Company considers the expenses associated with these reliability advertisements to be recoverable in rates.

AIC argues that in its rebuttal case, Staff continued to object to the recovery of the 2019 expense for voucher number 3637279 and Staff objects to the advertisements’ “positive imaging with a message that the Company’s upgrades are making life better for Ameren Illinois customers and their pets, children, and families.” AIC opines that Staff still claims that this imagery has the primary purpose of “increase[ing] customer satisfaction with Ameren Illinois system upgrade,” but Staff has not identified any evidence to support this belief. AIC states that as AIC witness Kennedy testified, the “primary purpose of these advertisements is to educate customers on reliability efforts in Illinois and urge them to visit the Company’s website for additional information.” AIC avers that the fact the advertisements use “positive” images in the advertisements does not in any way prove Staff’s point. AIC argues that one would hope that advertisements about the benefits of Ameren’s reliability investments would deliver a “positive” message that Ameren is improving the reliability of its natural gas pipelines and systems.

AIC says that Staff, in its rebuttal case, also criticized the “very general information” in the advertisements and suggests that this is more evidence that the message “is clearly designed to elevate the Company’s image rather than impart useful information to benefit customers.” Staff Ex. 9.0 at 16. AIC argues that its witness Kennedy pointed out, these advertisements are broadcasted to the entirety of Ameren service territory, which is large and diverse and “to maintain relevance in all geographic areas and to remain cost-effective, the messaging is broad, but also encourages customers to visit the website for specific information on projects and upgrades happening in customers’ respective area.” Ameren Ex. 38.0 at 5.

AIC notes that Staff also appeared to criticize the advertisements as “holiday” greetings. AIC argues these advertisements were not only published during the holidays and two of the advertisements have a year-round reliability focus, while the third advertisement was seasonal in nature, focusing on the winter months. AIC asserts that Staff is incorrect in suggesting that these advertisements were only broadcasted during the holidays.

AIC opines that Staff, in its rebuttal case, also claims that the advertisements were “revised to increase the likelihood of recoverability by adding to the reliability messaging.” AIC states that Staff argues that the fact that the advertisements were revised to add reliability messaging “demonstrates that reliability messaging was not the Company’s primary intent with this advertisement” and “indicates the reliability messaging was an afterthought.” Staff Ex. 9.0 at 14-15. AIC notes that, as AIC witness Kennedy points out, making messaging revisions is standard practice in the production of advertisements and in this instance, upon review of the draft advertisements, Ameren’s internal subject matter experts made revisions to emphasize the reliability message. AIC argues that HLK, the vendor that created the initial versions, offered options and drafts for consideration and the Ameren team, however, refined those creative concepts to reflect what the Company considers important to communicate to customers. AIC states that in these advertisements, that critical message is reliability. AIC explains that the vendor may often have a general idea of the themes that the Company wants to focus on. AIC continues, stating, the back and forth discussions and adjustments to the content and design of the advertisements, however, are important in ensuring that the advertisement both educates and informs the customers, while also keeping their attention.

AIC argues that Staff, in its rebuttal case, calls into question whether “the Company’s desire to rehabilitate the questionable advertisement was more important than communicating the reliability messaging and betrays the motive for the advertisement in the first place.” Staff Ex. 9.0 at 15. AIC maintains that there is no basis in the record for that accusation. AIC avers as AIC witness Kennedy explained, educating customers about system improvements and their positive impact on reliability has been a cornerstone of Ameren’s external messaging for many years. AIC explains that the Company’s advertising messages are reviewed periodically, and adjustments are made. AIC notes the specific advertisements may look different from year to year, but the core goal remains the same: help customers understand how their resources are being deployed to build a safe and reliable energy delivery system. AIC asserts that to capture the attention of the viewer and compel them to take additional steps to educate themselves about the system reliability, and website offerings, it is important to refresh the design and production of the advertisements on a periodic basis. AIC maintains that Staff’s speculation on the intent of the advertisements does not support an adjustment.

AIC states that Staff’s testimony does not show that the main purpose of the advertisements is to improve Ameren’s image. AIC argues that as the Company testified, the primary purpose of these advertisements is to educate and engage customers about system improvements in the Ameren’s service territory and encourage them to take action to visit the Ameren reliability website to find out more information about improvements in their area. AIC avers any favorable impact to Ameren’s image is ancillary to that message

and not a basis to disallow the expense from rates. AIC asserts that for these reasons, the Commission should reject Staff's proposed adjustment to advertising expense.

b) Staff's Position

Staff contends that the Commission should accept Staff witness Pearce's proposed adjustment to reduce the cost of advertising in the amount of \$170,000 on the basis that such charges are designed primarily for promotional and goodwill purposes. Staff Ex. 2.0 at 10-12. Section 9-225 of the Act expressly states in part:

In any general rate increase requested by any gas or electric utility company under the provisions of this Act, the Commission shall not consider, for the purpose of determining any rate, charge or classification of costs, any direct or indirect expenditures for promotional, political, institutional or goodwill advertising, unless the Commission finds the advertising to be in the best interest of the Consumer or authorized as provided pursuant to subsection 3 of this Section.

220 ILCS 5/9-225(2). Section 9-225 of the Act defines goodwill or institutional advertising as:

. . . any advertising either on a local or national basis designed primarily to bring the utility's name before the general public in such a way as to improve the image of the utility or to promote controversial issues for the utility or the industry.

220 ILCS 5/9-225(1)(d).

Staff explains that Staff witness Pearce's proposed adjustment removes 2019 costs for an advertising campaign during the holiday season to increase customer satisfaction with AIC system upgrades. Ameren Ex. 26.1 at 1-14. Staff continues, stating that Staff witness Pearce observed that the advertisement portrays three different scenarios that could occur in the home life of an AIC customer and each scenario combines positive imaging with a message that the Company's upgrades are making life better for AIC customers and their children, families and pets. The advertisement closes with wishes for a warm and bright holiday season from "Ameren Illinois." Ameren Ex. 26.1 at 7-8, 10.

Staff states that the voiceover for each advertisement contains a message that promotes the Company through its focus on installing smart meters (Ameren Ex. 26.1 at 3-4), as well as building the smart grid and using technology to inspect and replace gas pipelines (*Id.* at 5-6) to increase system reliability. Staff argues these pages promote the Company's investments in the electric and gas distribution systems and the resulting reliability of its system and end with a holiday greeting. Staff points out this portion of the advertisement provides very general information about the enhanced systems being built by AIC and the message is clearly designed to elevate the Company's image rather than to impart useful information to benefit customers. Staff Ex. 9.0 at 15-16.

Staff also notes Ameren revised the advertisement to include information on reliability messaging and education about how AIC upgrades are positively affecting customers. Staff states AIC witness Kennedy argues that the primary goal of these spots

is to (1) educate and engage customers about improvements; and (2) to encourage customers to visit the AIC website to find out more information about current and future improvements to their area's electrical grid.

Staff contends that this argument should be rejected because the Company itself appears to have determined the original advertisement was clearly institutional or goodwill advertising which did little more than to seek to improve Ameren's public image and that as such it was necessary to revise the advertisement to include some reliability messaging. Staff argues that the Company's revision supports Staff witness Pearce's proposed adjustment because it demonstrates that reliability messaging was not the Company's primary intent in producing and placing this advertisement and it seems clear that the Company elected to add reliability messaging to an existing goodwill ad in hopes of improving the likelihood that the Company could recover its cost in rates, rather than producing a free-standing reliability advertisement. Staff opines the reliability messaging was an afterthought. Staff argues that based on the entirety of this information, it is clear that a revision to the advertisement was made because the Company was concerned about recoverability of costs, and an adjustment is necessary to prevent the Company from disguising promotional or goodwill advertisements as reliability messaging for the purpose of making such advertisements recoverable in rates. Staff Ex. 9.0 at 14-15.

Staff notes that AIC argues that the informational aspects of the advertisement outweigh the promotional aspects of the advertisement and support ratepayer recovery of those costs, citing language in the Commission Orders in Docket Nos. 15-0305 and 16-0262 (both of which relate to electric distribution formula rate updates) as support.

Staff argues that the Act places the burden of proof on the utility to demonstrate that costs included in rates are just and reasonable. 220 ILCS 5/9-101. Staff asserts to that end, the burden is on the Company, based on the evidentiary record, to show the contested advertisements provide sufficient customer information to justify recovery of their costs from ratepayers, and that the contested advertisements are not primarily promotional and goodwill in nature (and thus unrecoverable in rates according to the standards within the Act that prohibit recovery from ratepayers of advertising expenses of a promotional, goodwill, or institutional nature). Staff Ex. 9.0 at 13.

Staff notes significantly, the two cases Ameren cites were electric distribution formula rate updates and the statute that authorizes formula rates, Section 16-108.5 of the Act, which contains a provision that essentially shifts the burden of proof with respect to the proponent of an adjustment. See 220 ILCS 5/16-108.5(d) (after utility makes its formula filing, and if a hearing is convened "each objection [to the utility's proposed formula recovery] shall be stated with particularity and evidence provided in support thereof, after which the utility shall have the opportunity to rebut the evidence."). Staff states, accordingly, AIC witness Kennedy's assertion that the party challenging the advertisement has the burden should be rejected. Staff argues further, the evidence in this case shows that the reliability messaging was included in the advertising as an afterthought and demonstrates the primary purpose of this advertisement is to increase customer satisfaction with AIC system upgrades and to promote the image of AIC. For all the foregoing reasons, Staff argues the Commission should accept Staff's proposed adjustment to reduce advertising expense by the \$165,000 as found in Staff Ex. 9.0,

Schedule 9.01, and to remove this portion of advertising expense from the revenue requirement in this proceeding.

c) Commission Analysis and Conclusion

The Commission agrees with Staff's proposed adjustment to reduce advertising expense by the \$165,000 found in Staff Ex. 9.0. AIC is correct in its assertion that the burden lies with "the party proposing the adjustment to a 'goodwill' advertisement must show that 'the promotional aspect of the advertisement outweighs the message of the advertisement.'" Docket No. 15-0305, Order at 46 (citing Docket No. 11-0721, Order at 102); Docket No. 16-0262, Order at 27. However, Staff is also correct that the initial burden is on the utility to demonstrate that costs included in rates are just and reasonable. 220 ILCS 5/9-101.

The costs related to the advertisements at issue in this proceeding are not just and reasonable. AIC admits that these costs are production costs for three different broadcast and digital advertisements for television, web videos and radio that highlighted AIC's commitment to providing its customers with reliable service. Thus, the purpose of the advertisements was to bolster customers confidence in the Company's reliable service and improve the image of the utility.

Additionally, if the Commission were to accept AIC's argument that the burden shifts to Staff to prove that an adjustment should be made, Staff met the burden. There is almost no educational or informative material in the advertisements and the promotional aspect of the advertisement far outweighs the message of the advertisement.

Contrary to the Company's suggestion that these advertising costs are being disallowed because the advertisements happen to be "positive," these costs are being disallowed because the Company failed to show that the advertisements were not primarily promotional.

For these reasons, the Commission adopts Staff's adjustment.

3. Executive Compensation

a) AIC's Position

AIC explains that it is through its workforce that it is able to provide the optimal gas service that customers expect. AIC states that its forecasted 2021 costs of gas service include the Company's gas jurisdictional cost to compensate that workforce, including the approximate \$4 million cost to compensate all executive-leadership (officer-level) employees. AIC explains that the executive compensation cost is composed of both base pay and incentive pay and it is forecasted based on AIC's market compensation data supplied by the thousands of companies with which AIC competes for officer-level talent and on AIC's actual compensation experience. AIC maintains that, anchored in these factors, consistent with Commission precedent, AIC's forecasted executive compensation is both prudent and reasonable, as it will ensure that AIC can continue to attract, retain, and motivate the leadership necessary to serve Illinois gas customers.

AIC notes that the AG asks the Commission to disallow a substantial portion—over two-thirds—of AIC's test year executive compensation cost. Specifically, AG witness Selvaggio testified that the Commission should not permit AIC to recover: (1) the entirety

of the cost to compensate its top five officers; (2) the cost related to any new officer hires from outside the Ameren organization, any new officer promotions from within the Ameren organization, and any pay adjustments for officer-level employees due to transfers, job classification changes, and the like, since December 31, 2019; and (3) the cost for the portion of officer incentive pay that encourages AIC's leadership employees to remain with the Ameren organization—Restricted Stock Units ("RSUs").

AIC states that AG witness Selvaggio's proposed adjustments, are arbitrary and are not based on AIC's actual experience compensating its leadership employees or any market compensation data. AIC explains that AG witness Selvaggio's adjustments are based only on her own apparent disagreement with rate recovery of officer-level employee compensation, her unqualified and unsupported opinions that officer-level employee compensation is "high" and that AIC has an "unlimited number" of officer-level employees, and her misunderstanding of the purpose of RSUs. AIC asserts that adopting them not only would be arbitrary, unreasonable, and imprudent, but also would risk AIC's ability to attract, retain, and motivate the skilled leadership employees that it needs to provide optimal service to Illinois gas customers.

AIC explains that, per Illinois law, utility rates must permit a public utility to recover its prudent and reasonable costs of service, *Citizens Util. Bd.*, 166 Ill. 2d at 126; 220 ILCS 5/9-101 (just and reasonable costs of service are recoverable), including the utility's prudent and reasonable cost to compensate its employees, *People ex rel. Madigan v. Ill. Commerce Comm'n*, 2011 IL App (1st) 100654, ¶ 49 (citing *Bus. & Prof'l People for Pub. Interest v. Ill. Commerce Comm'n*, 146 Ill. 2d 175, 247 (1991)) ("*BPI II*"); *Village of Milford vs. Ill. Commerce Comm'n*, 20 Ill. 2d 556, 565-66 (1960) (finding total operating expenses, including officers' salaries, were not excessive). AIC further explains that the Commission may not disregard the level of an operating expense, including employee compensation cost, shown by the evidence to be prudent and reasonable in favor of an arbitrarily lower amount. *The Peoples Gas Light and Coke Co. v. Slattery*, 373 Ill. 31, 61-62 (1939); *Bus. & Prof'l People for Pub. Interest v. Ill. Commerce Comm'n*, 136 Ill. 2d 192, 230-34 (1989) (reversing rates set by the Commission based on a Staff analysis where "Staff arbitrarily selected the midpoint of the rate range and made arbitrary assumptions on the success of the various positions of the parties and the intervenors"); *Citizens Util. Bd.*, 166 Ill. 2d at 126, 133-34 (reversing Commission decision that arbitrarily reduced the utility's coal-tar clean-up expense because it did not rest on adequate substantiating evidence); *Ameren Ill. Co.*, Docket No. 15-0142, Order at 36 (Dec. 9, 2015) (rejecting arbitrary two percent cap on employee compensation cost).

AIC maintains that it is axiomatic that prudent and reasonable employee compensation is that level of compensation that ensures the utility the workforce that it needs to satisfy its service obligations to customers. 220 ILCS 5/8-401 AIC points out that the Commission has found that forecasted employee compensation cost will ensure the utility the necessary workforce—and thus is prudent, reasonable and recoverable—when it is consistent with the compensation data reported by the companies that the utility competes with for skilled employees and the utility's actual compensation experience, both of which the Commission has found "are important considerations." Docket No. 15-0142, Order at 35-36.

AIC explains that to deliver the gas service expected by Illinois customers, AIC requires a stable and talented workforce, including executive leadership. AIC explains that it must compete for that talent in the labor market, where recruiting to the utility industry is particularly challenging. AIC explains that to attract and retain leadership employees, therefore, AIC must offer a comprehensive executive compensation package, including base and incentive pay, that is both consistent with market practice and competitive.

AIC explains that to ensure that it is offering officer-level employee compensation that is prudent and reasonable, AIC relies on extensive market data. AIC states that annually, it gathers competitive national, regional, and local market pay data from multiple compensation surveys conducted by reputable and reliable third-parties, like Willis Towers Watson, Aon Hewitt, and Mercer HR Consulting. AIC explains that it relies on Willis Towers Watson's BenVal survey, for example, which quantitatively compares thousands of companies' benefit plan design practices. AIC explains that it uses the market data to establish officer-level employee compensation that is within market ranges for an officer-level position and that is commensurate with the officer's role, skills, expertise, and experience that they bring to their position, and to otherwise benchmark its employee compensation packages against those of its industry peers. AIC maintains that, in this way, it confirms that its executive compensation packages are market-consistent and competitive, and therefore prudent and reasonable.

AIC explains that it also ensures that its executive compensation is prudent and reasonable by assessing the efficacy and success of its historical compensation practices. AIC points out that AIC's 2021 forecasted level of executive compensation cost in this proceeding reflects its actual historical experience as of December 2019, adjusted for annual average three percent merit pay increases for officer-level employees, which is consistent with 2019 market data, and known or expected organizational changes. AIC explains that these known or expected organizational changes include such things as new officer hires from outside the Ameren organization, adjustments to base pay for new officer hires within the Ameren organization, retirements, and other adjustments for officer-level employee promotions, transfers, job classification changes and the like, over the two year period 2019 to 2021. AIC proffers that its actual experience supports that these changes will happen. AIC points out that its forecasted executive compensation cost is developed based on its actual historical experience, adjusted for expected changes.. AIC explains that its actual experience reflects the compensation levels that AIC has historically required to attract and retain leadership employees, with success. AIC notes that the best evidence of this success, perhaps, is the lack of executive leadership turnover at AIC: no Ameren Leadership Team member has voluntarily resigned from the Company for reasons other than retirement (e.g., accepting employment with another company) since 2014. AIC maintains that this demonstrates that AIC's approach to establishing executive compensation is functioning as intended; it is permitting AIC to attract and retain the talented workforce that AIC needs to provide optimal gas service to Illinois customers. Docket No. 15-0142, Order at 36 (finding prudent and reasonable employee compensation cost where "AIC's approach has functioned well since there is an absence of significant turnover. Additionally, the record shows that AIC's test year forecast is consistent with the compensation data reported by the companies that it competes with for skilled employees.").

AIC notes that AG witness Selvaggio proposed to disallow substantial portions of AIC's forecasted 2021 executive compensation cost: the cost to compensate AIC's top five officers, wholesale; and the cost for new officer hires and for pay adjustments resulting from officer promotions, transfers, retirements, and job reclassifications within the Ameren organization from 2019 to 2021. AIC states that apart from annual three percent merit pay adjustments, AG witness Selvaggio proposes to limit AIC's rate recovery to the Company's actual executive compensation cost as of December 31, 2019, minus, in its entirety, the compensation paid to AIC's top five officers. AIC asserts that this proposal is not founded in market compensation or historical analysis, but rather the individual opinion of AG witness Selvaggio herself.

AIC points out that AG witness Selvaggio does not dispute that AIC requires officer-level employees to operate its business, or that officer-level employee compensation is a cost to AIC to operate its business. Nor is it AG witness Selvaggio's position that AIC should not hire employees to the officer position from outside the Ameren organization, or that AIC should not promote employees to the Officer position from within the Ameren organization. And, AIC notes, remarkably, AG witness Selvaggio has provided nothing to support a finding that AIC should not compensate its top-level executives.

AIC further explains that AG witness Selvaggio does not dispute that AIC's test year executive compensation cost is grounded in extensive market data or AIC's historical compensation experience in attracting and retaining leadership talent. AIC argues that AG witness Selvaggio has no knowledge or understanding of the levels of total compensation offered to executives in the energy industry market in 2019, 2020, and 2021 and does not know and has not considered, for example, the market median compensation in 2018 and 2019 for the CEO position in the U.S. energy industry.

AIC notes that AG witness Selvaggio attempts to support her position by stating her belief that Commonwealth Edison Company ("ComEd") "voluntarily removes from its requested revenue requirement the highest paid compensation of executive officers," so, she testified, her "adjustment is consistent with the practice of the other large utility in Illinois" AIC argues that to rely on this opinion would be contrary to law because the standard for recovery of AIC's forecasted test year costs in this proceeding is whether the costs are just and reasonable. 220 ILCS 5/9-101. AIC argues that it is not whether a witness believes that a cost adjustment "is consistent with the practice of the other large utility in Illinois." AIC states that AG witness Selvaggio never explained why ComEd's practice is relevant here or why she singled-out ComEd's practice regarding executive compensation, to the exclusion of myriad other Illinois public utilities' practices.

AIC notes that AG witness Selvaggio also complains that AIC's executive compensation is "high" but, never explained relative to what. AIC asserts that the testimony has no grounding in the uncontested record evidence, which demonstrates that AIC's executive compensation is consistent with both extensive market data from AIC's compensation peer group and AIC's own successful experience in attracting and retaining leadership talent. AIC notes that AG witness Selvaggio never engaged with or rebutted that record evidence, even though, as explained, the Commission deems a utility's market compensation data and actual compensation experience "important considerations" in determining the prudence and reasonableness of the utility employee compensation cost.

Docket No. 15-0142, Order at 36 (rejecting AG proposal that “does not take into consideration AIC’s actual experience and industry market compensation. The Commission finds that these are important considerations.”).

Regarding AIC's cost for new officer hires and promotions and other officer related adjustments since 2019, AIC notes that AG witness Selvaggio accuses AIC of asking ratepayers to fund the total executive compensation costs of Ameren of an “unlimited number” of officers. AIC explains, AG witness Selvaggio never identifies what the “number” of officers should be, never identified any officer-level position that she believes should be cut, is imprudent or unreasonable, and never explained why she proposed to disallow the cost of other officer-level pay adjustments.

AIC maintains that the record evidence demonstrates there is not, and reasonably should not be, a static number of officer-level positions. AIC explains that it must put in place an organizational structure that provides strategic leadership and oversight of critical areas of focus, to ensure operational excellence, disciplined cost management, and customer satisfaction. AIC explains, when it determines the need for an officer-level role, AIC considers span of control, the critical and strategic nature of the work involved, and succession needs to ensure continuity of its leadership team in preparation for upcoming retirements. AIC explains that its forecasted 2021 executive compensation expense, and each of the officer positions that were added to the organizational structure since 2018, reflect those considerations. Additional officer hires will reflect them as well.

AIC argues that AG witness Selvaggio’s adjustments are contrary to law and the record evidence. On these grounds, AIC maintains, the Commission must reject them. AIC continues that the other reason that the Commission should reject the AG's adjustments is that it would not be reasonable or prudent to risk AIC’s ability to attract and retain the skilled leadership level employees that it needs to meet its service obligations to Illinois gas customers. AIC explains that if it were to offer executive compensation in line with AG witness Selvaggio's adjustment, which is not consistent with the market or competitive, it could jeopardize AIC's stable workforce, at a cost to customers. AIC explains that there is a cost associated with replacing an employee, including separation, recruiting, productivity, and onboarding costs and at the executive employee level, these costs are estimated to be as much as 200% to 400% of the individual employee’s base pay. *Cf.* Docket No. 15-0142, Order at 35-36.

AIC explains that incentive (or “at risk”) compensation is compensation that is contingent on employee or company performance and is a common component of the total compensation package offered to employees in the utility industry. Thus, AIC explains, it is the Commission’s practice to allow recovery of prudent and reasonable incentive compensation cost, as a part of the utility’s total compensation cost, in utility rates. See, e.g., Docket No. 15-0142, Order at 44.

AIC notes that the Commission’s standard for assessing the prudence and reasonableness of incentive compensation is well established: “Recovery of prudent and reasonable incentive compensation expenses is permissible through rates if the costs are related to operational goals that benefit customers. Incentive compensation costs based on financial performance that primarily benefit shareholders are not recoverable.” *Id.*; see also, e.g., *N. Shore Gas Co.*, Docket Nos. 12-0511/0512 (Cons.), Order at 130 (June 18,

2013) (“The Commission has a long-standing policy of allowing incentive compensation costs when those costs benefit ratepayers.”); *People ex. rel. Madigan*, 2011 IL App (1st) 100654, ¶¶ 51, 55 (affirming the Commission’s customer benefit standard for the recovery of incentive compensation costs). “It is the Commission’s position that if the record evidence shows that incentive compensation costs requested for recovery through rates are prudent, reasonable, and based on the achievement of operational metrics that can reasonably be expected to provide overall benefits to customers, then those incentive compensation costs should be recoverable.” Docket No. 15-0142, Order at 44.

AIC explains that today, incentive compensation is an expected component of total compensation packages in the market to attract and retain employees. AIC explains, all AIC employees’ total compensation include the opportunity for incentive compensation. AIC continues that it also offers all employees incentive compensation because that compensation enables AIC to engage and motivate its employees to continuously improve their performance and achieve business goals that benefit customers. AIC points out that it could provide total compensation in the form of higher base pay alone. AIC maintains, however, that a pure base pay approach would lessen the connection between pay and performance.

AIC explains that AIC officer-level employees have the opportunity to earn incentive compensation based on both short-term goals (achieved over a one-year period) under the Ameren Short-Term Incentive Plan (“STIP”), and long-term goals (achieved over a longer, typically three-year, period) goals under the Ameren Long-Term Incentive Plan (“LTIP”). The LTIP rewards eligible officers for their contributions to Ameren’s success by providing the opportunity to earn shares of Ameren common stock. AIC explains that 70% percent of the LTIP is composed of stock unit awards that are based on Ameren’s financial performance and those stock units are called Performance Share Units (“PSUs”). AIC explains that the remaining 30% percent of the LTIP is composed of RSUs which represent the right of an employee to receive stock depending solely on the employee’s continued employment with the Ameren organization through a defined vesting period. AIC explains that the purpose of RSUs is to encourage retention and longevity with AIC, recognizing that a stable workforce benefits AIC customers, including by avoiding the lost productivity and costs associated with employee turnover.

AIC maintains that consistent with the Commission’s recovery standard for incentive compensation cost, AIC did not seek the jurisdictional cost related to PSUs, but AIC included in the forecasted 2021 revenue requirement the remaining LTIP cost related to RSUs. Docket No. 18-0463, Order; *Ameren Ill. Co.*, Docket No. 19-0436, Order, (Dec. 16, 2018); *Ameren Ill. Co.*, Docket No. 20-0381 (pending).

AIC states that AG witness Selvaggio recommended that the Commission disallow AIC’s gas jurisdictional Restricted Stock Unit (“RSU”) costs. AIC notes that AG witness Selvaggio offered two reasons for that recommendation: (1) “[t]here are many reasons officers stay employed at Ameren and [she] would not expect the stock incentives to be the determinative factor”; (2) it is her understanding that ComEd self-disallows the cost of Exelon’s “Key Manager Restricted Stock Award” program in its annual electric formula rate cases and that the Commission has approved formula rates that (accordingly) do not reflect those costs. AG Ex. 4.0 at 27-28. AIC contends that AG witness Selvaggio’s reasons ignore the record and the law.

First, AIC points out, the record evidence demonstrates that removing RSUs from AIC officers' total compensation packages likely would be determinative if it reduces overall officer compensation to below market levels and consequently risks AIC's ability to attract and retain the leadership level talent necessary to run its business and serve its customers. AIC explains that the record further reflects that RSUs are different from other compensation insofar as their value in hand to the employee is zero until the expiration of a fixed vesting period of 38 months during which the employee has remained with the Company. AIC explains that base pay and short-term incentive compensation, while also necessary and important components of Ameren's total compensation package, do not require an officer to remain employed with the Company for 38 months before receiving payment.

Second, AIC asserts, the incentive compensation cost recovery standard that the Commission applies in this proceeding is whether the cost is just and reasonable and benefits customers. AIC contends that ComEd's practice, even if it were as AG witness Selvaggio states, is not the legal standard, and AIC notes that AG witness Selvaggio did not explain why ComEd's practice is relevant to the actual legal standard the Commission must apply in this proceeding.

Third, AIC maintains that AG witness Selvaggio's testimony inexplicably overlooks that the Commission approved recovery of AIC's RSUs cost in AIC's last formula rate update, Docket No. 19-0436, AIC's last gas rate case, Docket No. 18-0463, and in Nicor's rate case, in which the Commission expressly found, just last year, that RSUs benefit customers:

RSUs are stock units that vest over a defined period of time based solely on continued employment and are not subject to or based on financial metrics for the benefit of shareholders. The Commission holds that employee longevity provides a tangible benefit to ratepayers through reduced expenses and the creation of greater efficiencies in operations due to a more seasoned workforce.

N. III. Gas Co. d/b/a Nicor Gas Co., Docket No. 18-1775, Order at 82 (Oct. 2, 2019).

AIC maintains that AG witness Selvaggio's adjustment to AIC's test year RSUs costs is contrary to the law, the evidence, and even recent express Commission precedent. AIC asserts that for any or all of these reasons, the AG's adjustment should be rejected.

AIC concludes that there is simply no basis in the record evidence or the law for the Commission to depart from its October 2019 Docket No. 18-1775 conclusion regarding, and its past AIC rate case orders (Dockets Nos. 18-0463 and 19-0436) approving, recovery of RSUs. AIC maintains that as Staff and AIC agree, the evidence in this proceeding demonstrates that RSUs benefit customers.

b) Staff's Position

Staff argues that the Commission should not adopt the AG's proposed adjustment to reduce 2021 executive compensation expense by approximately \$1.6 million because the record does not support a finding that the cost increases are unreasonable or

imprudent. *Commonwealth Edison Co.*, Docket No. 10-0467, Order at 101 (May 24, 2011).

Staff argues that the AG's proposed adjustment is three-fold. See *generally* AG Ex. 4.1. Staff states that first, it would match the test year compensation level to the actual 2019 compensation level. Second, it would remove approximately \$946,000 for the costs of executive compensation for the five highest paid officers of Ameren Corporation, consistent with ComEd's practice. Third, it would remove \$115,000 for the cost of RSUs for all officers, as proposed and later withdrawn by Staff witness Pearce in her direct testimony. Staff Ex. 9.0 at 10. Staff explains that AG witness Selvaggio posited that the proposed adjustment would achieve a sharing of costs between shareholders and ratepayers. AG Ex. 1.0, 19-20.

Staff notes that AIC took issue with the AG's executive compensation adjustment, noting the adjustment would remove nearly half the test year expense for executive compensation. Staff says that AIC asserted that the adjustment would disallow reasonable merit pay increases and other pay adjustments associated with promotions and organizational changes and it would also remove, wholesale, the compensation for certain AIC officers without any demonstration that the cost is unreasonable. Ameren Ex. 25.0 at 15.

In Staff's view, the record does not support the conclusion that the Company should not recover any of the costs of these executive salaries. Staff notes that the Commission declined to approve a 50/50 cost sharing of Board of Directors' expenses at issue in Docket No. 10-0467, premised on a rationale similar to that which the AG relies upon in the current proceeding. Docket No. 10-0467, Order at 101. Staff concludes that given the Commission's previous finding on a similar cost-sharing proposal, Staff does not agree that this rationale supports a finding that the costs are unreasonable or imprudent. Staff Ex. 9.0 at 27.

c) AG's Position

The AG states that it proposes a \$1.658 million reduction of the Company's projected 2021 executive compensation allocated to gas jurisdictional officers which would result in keeping compensation levels at actual levels from 2019 and would remove executive compensation costs for the Company's five (5) highest paid officers. The AG asks the Commission to adopt their adjustment to Ameren's 2021 executive compensation, which would remove a 19.86% increase from the Company's 2019 actual levels and remove the cost of RSUs, because this compensation is excessive and unreasonable. The AG argues that Ameren provides no reasonable justification for the dramatic increase other than generic, broad statements.

The AG contests that these include generalized claims by AIC about "compet[ing] for ... talent in the labor market" (AIC IB at 64), offering "base and incentive pay [] that is ... consistent with market practice and competitive" (*Id.*), that its officer-level compensation "relies on extensive market data" (*Id.*), and that "lack of executive leadership turnover" represents "[t]he best evidence" that its compensation levels are "successful" in "attract[ing] and retain[ing] leadership employees ..." (*Id.* at 66). The AG argues that such statements by AIC only serve to deflect and neglect its statutory burden "to prov[e] that its proposed rates are just and reasonable." *Citizens Util. Bd. v. Ill.*

Commerce Comm'n, 276 Ill. App. 3d 730, 746 (1st Dist. 1995). The AG argues the Company falls significantly short of meeting its burden here.

The AG contends that the Company has done no more than challenge the AG's inquiry into the basis for the Company's proposed increase from its 2019 actual levels by arguing that AG witness Selvaggio lacks knowledge or understanding of such compensation costs in the energy industry market, but that in doing so, the AG asserts the Company fails to provide any response sufficient to satisfy its burden. The AG states that it does not dispute that Ameren can employ and compensate executive employees. The AG argues that what it disputes is whether Ameren has provided substantial evidence to meet its statutory burden to recover a 19.86% increase from its 2019 actual costs. According to the AG, a close to 20% increase in executive compensation costs from 2019 to the 2021 test year is not reasonable on its face, and generic statements about competition and retention are not enough.

The AG argues that the Company has only provided rhetorical answers, strangely contending that the AG failed to explain what "the number of officers should be," or which of them should be "cut." AIC IB at 69. The AG asserts that it is not the AG's burden to explain why Ameren's executive compensation costs are reasonable and prudent, or why the nearly 20% increase is acceptable. The AG argues it is not sufficient for the Company to respond with vague, intangible statements such as "span of control," "strategic nature of ... work," or "succession needs." *Id.* The AG contends that Illinois courts have made clear that "there is ample precedent making a benefit to ratepayers a condition upon which the recovery of salary-related expense depends." *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 398 Ill. App. 3d 510, 517 (1st Dist. 2009). The AG asserts that where a party fails to produce evidence in its control, as the AG claim AIC has repeatedly done here, the Commission should accept that the presumption arises that the evidence would be adverse to AIC. See, e.g., *Aqua Ill., Inc.*, Final Order, Docket No. 14-0419 at 23 (March 25, 2015), citing *Reo Movers, Inc. v. Indus. Comm'n*, 226 Ill. App. 3d 216, 223 (1st Dist. 1992).

The AG further notes that although Staff indicated "the record does not support the conclusion that the Company should not recover any of the costs of these executive salaries" (Staff IB at 15), Staff's conclusion appears to be based only on "the Commission's previous finding" in Docket No. 10-0467, Order at 101. In that docket, the AG explains that the Commission found that: "While Staff is correct that when a party fails to produce available evidence, the presumption is that the evidence is unfavorable to that party. However, absent specific evidence as to what portion of the board's time is devoted to activities that do not benefit ratepayers, the Commission declines to conclude that any portion of time should be excluded here." *Id.* at 100. The AG argues that because it is the utility's burden to produce this information, the Commission in Docket No. 10-0467 arrived at an incorrect result.

The AG next argues that the Commission should adopt their proposal to exclude executive compensation for the Company's five highest paid officers because Ameren has not provided sufficient evidence to explain why its executives should receive such significant increases, or data to indicate whether its proposed level of increase is the least amount ratepayers should pay. The AG points out that the Company's argument that having "no Ameren Leadership Team member ... voluntarily resign[] ... for reasons other

than retirement since 2014” hardly constitutes “best evidence” (AIC IB at 66), and that what this actually supports is the AG’s proposed adjustments, and AG witness Selvaggio’s suggestion that executive compensation is too high.

The AG argues that an average person would not find this level of compensation reasonable, particularly for a company providing an essential monopoly service, with a large portion (electric) under a formula rate process that guarantees profits at a statutorily mandated rate. The AG opines that compensation at this level should be paid by shareholders. The AG contends that Ameren’s projected increase is especially troubling because according to the Illinois Department of Employment Security, more than half of the counties experiencing the highest unemployment rates (over 9%) in Illinois are located inside Ameren’s service territory (e.g., St. Clair (10.2%), Peoria (11.3%), and Macon (11.2%)). The AG also points out that the longevity of Ameren’s executive employment also deflates the Company’s assertions that the AG’s adjustment would result in any real danger to its recruitment and retention levels. Lastly, the AG asserts that this disallowance is not unusual because another large utility, ComEd, removes the cost of its five highest paid executives. See AG IB at 32, *citing* Docket 20-0393, ComEd Ex. 1.04 at 38, WPC-1c.

The AG argues that based on the record evidence, only its proposal fulfils the Commission’s statutory duty to allow a reasonable amount of executive compensation in rates and to balance the competing interests of stockholders and ratepayers “taking into account the impact of proposed rates on ratepayers.” *Abbott Labs., Inc. v. Ill. Commerce Comm’n*, 289 Ill. App. 3d 705, 716 (1st Dist. 1997).

With regard to RSUs, the AG requests the Commission remove \$114,930 for RSU benefits for other AIC officers because AIC has failed to establish the requisite nexus between its RSUs and a direct consumer benefit. The AG argues that Ameren offers only generic and broad contentions in support of RSUs, claiming customer benefits such as “encourag[ing] and reward[ing] longevity,” and “providing an experienced leadership team,” while “also avoiding the productivity loss and replacement costs associated with turnover.” *Id.* at 10.

The AG argues that recovery of expenses related to incentive compensation, as with all AIC expenses, is subject to a determination of prudence and reasonableness consistent with Commission practice and law. 220 ILCS 5/9-201. The AG states that Illinois case law requires that an expenditure must result in a direct benefit to the ratepayers’ service to be found reasonable, prudent and recoverable by rates. This is referred to as the direct benefit standard, and the AG contends that this determination is embedded in Commission practice and applies when assessing salary-related expense, incentive compensation, and the cost of salaries. *People ex. rel. Madigan v. Ill. Commerce Comm’n*, 2011 IL App (1st) 100654, ¶52 (1st Dist. 2011). The AG argues a review of Commission decisions and practice reveals “ample precedent making a benefit to ratepayers a condition upon which the recovery of salary-related expense depends.” *Id.* In *Madigan*, the appellate court upheld a Commission decision that denied recovery of over 90% of a utility’s employee incentive costs. In doing so, the court agreed that the primary beneficiaries are shareholders not ratepayers, and stated that “[w]hen incentive compensation seeks to achieve goals that primarily benefit shareholders, then it is reasonable to require that shareholders bear the cost of that incentive compensation.” *Id.*

at ¶54. The AG argues that RSUs encourage actions that increase the value of stock, and therefore promote shareholder – not ratepayer – interest.

The AG contends that Ameren has not met its burden to charge consumers for its RSUs to AIC officers. The AG asserts that in *Madigan*, the utility made the same arguments Ameren does in the instant docket: The utility contended its incentive plan was reasonable and prudent because it would “attract and retain a sufficient, qualified and motivated work force, and that attracting and retaining such a work force benefits customers by making sure there are enough workers to perform needed work, by maintaining and improving the quality of work and by reducing the expenses associated with recruiting and retaining new employees.” 2011 IL App (1st) 100654 at ¶47. The AG maintains that the court was not convinced and affirmed the Commission’s decision that “attracting good employees is too remote a benefit for ratepayers to support recovery.” *Id.* at ¶48.

The AG point out that the Commission recently reached the same conclusion when it rejected Nicor’s request to include certain incentive compensation in its energy efficiency costs. *Ill. Commerce Comm’n v. Northern Ill. Gas Co. d/b/a Nicor Gas Co.*, Docket No. 16-0458, Final Order at 11–13 (Mar. 4, 2020).

In the instant proceeding, the AG asserts Ameren offers the same rationale as those presented by the utility in *Madigan*, that RSUs promote longevity and a stable work force. Ameren Ex. 12.0 at 8. According to the AG, Illinois case law clearly shows Ameren’s generic statements are not enough, do not excuse it, nor lessen the Company’s statutory burden. The AG maintains that the record is deficient, and that Ameren has provided no information to assure the Commission that RSUs would not similarly link compensation to the performance of the Company’s stock, aligning the officer’s interests with shareholders’ interests. The AG requests that the Commission find that Ameren failed to establish the required nexus between the incentive expense (RSU) and ratepayers such that the benefit is not tangential, and remove \$114,930 for RSU from the revenue requirement along with the other executive compensation adjustments proposed by AG witness Selvaggio.

d) Commission Analysis and Conclusion

The Commission declines to adopt the AG’s proposed adjustment to reduce 2021 executive compensation expense by approximately \$1.6 million. The Commission finds that the record is sufficient to meet AIC’s initial burden to prove that employee compensation, including executive employee compensation, is a cost necessary to provide gas service under AIC’s proposed 2021 charges. The record evidence demonstrates that AIC’s total forecasted employee compensation cost, including the cost of executive base pay and incentive compensation, is based on and is consistent with AIC’s actual compensation experience and market compensation data.

The Commission also finds that the record in this case is insufficient to support a finding that the cost increases are unreasonable or imprudent. The Commission notes that the AG argues AIC has not provided sufficient evidence to support such significant increases. However, the AG failed to prove the Company’s compensation method is incorrect or unreasonable.

Regarding the AG's adjustment related to RSUs, the Commission declines to adopt the adjustment. The record demonstrates that RSUs are awarded as incentive compensation, which the Commission has found to be permissible in the past. Recently the Commission found the recovery of RSUs to be permissible in Docket Nos. 19-0436 and 18-0463, stating that:

RSUs are stock units that vest over a defined period of time based solely on continued employment and are not subject to or based on financial metrics for the benefit of shareholders. The Commission holds that employee longevity provides a tangible benefit to ratepayers through reduced expenses and the creation of greater efficiencies in operations due to a more seasoned workforce.

Docket No. 18-1775, Order at 82. The AG has failed to provide any new information showing that this finding should no longer be applicable or that it is inapplicable to this case.

4. Gas-Only Employee Headcount/Vacancy Costs

a) AIC's Position

AIC states that IIEC witness Gorman proposed an adjustment to AIC's staffing forecast claiming AIC's proposed staffing forecast cannot be met between now and the test year. AIC argues that IIEC/CUB/FEA witness Gorman's assertions are unfounded. AIC acknowledges the challenges of filling positions due to the restrictions the COVID-19 pandemic presents and the increased attrition in current positions, and as a result, AIC revised its staffing forecast. AIC argues that IIEC/CUB/FEA witness Gorman, however, ignored AIC's revised forecast.

AIC discusses in its rebuttal testimony, the unusual situation and uncertainties associated with the COVID-19 pandemic and how it will proceed for the remainder of 2020 and into 2021. AIC witness Colyer explained why it is necessary to revise its original staffing forecast to reflect these factors. AIC witness Colyer explained why AIC revised its gas only staffing and that by year end 2021 there will be 902 positions filled. Additionally, AIC states that it has re-forecasted the timing of when positions are anticipated to be filled in 2021 to reflect a slower pace of hiring due to the uncertainties associated with the pandemic in 2020 and 2021, and attrition that is anticipated to continue into 2021. AIC presented Ameren Ex. 21.1 and 33.2 which reflects the revised gas only staffing forecast as further updated in surrebuttal. AIC explains that Ameren Ex. 21.1 also includes the work paper supporting Mr. Stafford's Ex. 19.8, which reflects the re-forecast of when positions are anticipated to be filled in 2021.

AIC notes that AIC witness Colyer testified that AIC has demonstrated historically that it has pursued filling positions according to its forecast. AIC asserts that the five-year average of gas only headcount variance comparing actuals to budget for 2015-2019 is six positions more than budgeted. AIC witness Colyer explained that past experience demonstrates that overall AIC has followed its staffing projections. AIC explains that actual gas only positions through June 2020 is 870 compared to 865 through April, or up five positions.

AIC opines that IIEC/CUB/FEA witness Gorman claims AIC will not fill the forecasted positions based on 2018 and 2019 staffing levels. AIC notes that IIEC/CUB/FEA witness Gorman's conclusion dismissed the fact that AIC filled less positions at the end of 2019 than anticipated. AIC maintains that it had to increase the vacancy factor in 2021 to reflect the additional attrition and timing to fill positions. AIC further notes that IIEC/CUB/FEA witness Gorman also ignored the fact AIC's actual 2018 payroll expenses were over budget and the actual 2019 payroll expense was under budget by only \$61,000 despite the vacant positions. AIC states that witness Colyer explained that when positions remain unfilled and work activities fluctuate in volume, then the incremental labor costs related to overtime may occur. AIC also says that Mr. Colyer noted that when AIC has unfilled positions and required activities must be completed this can result in incremental labor expense such as overtime where otherwise the overtime expense, or as much overtime expense, may not have occurred if one or more positions were filled.

AIC notes that it made the necessary adjustments to account for the hiring challenges created by the COVID-19 pandemic and expected attrition. AIC points out that in light of this evidence, it is notable that IIEC/CUB/FEA witness Gorman's testimony does not provide any evidence or information that the forecasted positions are not necessary for safe and reliable operations, any specific activities that he considers to be unnecessary for the Company to perform, or any specific positions that are performing unnecessary activities. AIC contends, instead, IIEC/CUB/FEA witness Gorman arbitrarily reduced the forecasted positions and did not apply the appropriate labor rates for the labor costs of the gas only positions.

AIC notes that IIEC/CUB/FEA witness Gorman opines that the staffing forecast is unreasonable since AIC will need to increase the pace of hiring during the COVID-19 pandemic, but IIEC/CUB/FEA witness Gorman did not provide any evidence that the operational needs of the Company changed. While AIC notes the pace of hiring slowed due to the challenges COVID-19 presented, AIC states that it anticipates increased hiring and filling of vacant positions in the fourth quarter of 2020 to meet operational needs. Moreover, AIC's revised staffing forecast reflects this slower pace of hiring. AIC explains it is now in the position to complete interviews remotely as well as on-board new employees either virtually or at its facilities. AIC witness Colyer testified AIC conducted training classes both virtually and in-person at Company training facilities in July to accommodate the training needs of new employees.

AIC argues that the Commission should reject IIEC/CUB/FEA's proposed staffing adjustment. AIC presented a revised forecasted staffing in rebuttal testimony and further clarified the forecast and vacancy factor in surrebuttal. AIC argues that the Commission should adopt AIC's revised staffing forecast and associated labor costs since the record demonstrates the costs are reasonable and achievable and recognizes the challenges presented by the pandemic.

b) Staff's Position

Staff asserts that it does not recommend the Commission adopt the IIEC/CUB/FEA adjustment to reduce the number of 2021 forecasted gas-only full time equivalent ("FTE") employees. Staff argues that the evidence shows that the Company can fill the open

positions. Staff states further, the known and measurable standard from 83 Ill. Adm. Code 287 that IIEC/CUB/FEA relies upon does not apply to future test years. 83 Ill. Adm Code 287.40 (pro forma adjustments to historic test year expenses or investment must be known and measurable).

Staff opines that the IIEC/CUB/FEA proposed adjustment would reduce the number of 2021 forecasted gas-only FTE employees from 912 to 865 positions, a reduction of 47 FTEs, consistent with AIC's actual gas-only headcount as of April 2020. Staff contends that IIEC/CUB/FEA witness Gorman calculated the costs associated with this reduction to be approximately \$4.852 million charged to expense and \$3.555 million charged to capitalized construction and other. IIEC/CUB/FEA Ex. 1.0 Conf. at 35-36; IIEC/CUB/FEA Ex. 1.10. Staff notes that in rebuttal testimony, IIEC/CUB/FEA witness Gorman revised his original calculation to reduce the Company's latest forecast of 907 gas-only positions to 870, the number of actual employees through June 2020, a reduction of 37 positions with associated cost reductions of \$4.3 million. IIEC/CUB/FEA Ex. 3.0 Conf. at 20. Staff opines the rationale for IIEC/CUB/FEA witness Gorman's reduction in the number of gas-only employee positions is that the actual number of positions to be filled by the end of test year 2021 is not known and measurable. Staff argues that this is evidenced based on the Company's inability to fill the budgeted level of employees in prior years, along with the current reduced pace of hiring, due in part to COVID-19 restrictions. IIEC/CUB/FEA witness Gorman opined that the Company is unlikely to spend its budgeted level of employee costs during the period rates determined in this proceeding will be effective. *Id.* at 21-24.

Staff argues that it appears that IIEC/CUB/FEA witness Gorman based his adjustment on the assertion that AIC's forecasted 2021 gas-only headcount is not a known and measurable cost. IIEC/CUB/FEA Ex. 1.0 Conf. at 35. Staff avers, however, Part 287 of the Commission's Rules, which establishes requirements for historical and future rate case test years, does not require that amounts in a future test year forecast be known and measurable. Staff notes the 'known and measurable' standard applies to pro forma changes to a historical test year, as set forth in Section 287.40. 83 Ill. Adm. Code 287.40. Staff witness Pearce noted that AIC revised its forecast downward from 912 to 907 gas-only positions in rebuttal testimony and removed the corresponding costs of these positions from the revenue requirement. Ameren Ex. 19.1, page 3, column (d); Ameren Ex. 19.8. Staff notes that AIC further revised its forecast down to 902 positions in surrebuttal testimony. Staff proffers that the Company replaced 47 positions during the time period from January through June 2020. Staff notes that based on the Company's response to IIEC's DR 8.6, the headcount was 870 at June 30, 2020, compared with 865 as of April 30, 2020, an increase of five positions filled. Staff Ex. 9.0 at 40. In Staff's view, this information appears to support the Company's contention it can fill the 32 open positions between July 1, 2020, and December 31, 2021. Staff Ex. 9.0 at 39-40. Staff recommends the Commission not adopt IIEC/CUB/FEA witness Gorman's adjustment.

c) IIEC/CUB/FEA's Position

IIEC/CUB/FEA state that they recommend reducing AIC's budgeted forecast from 907 to 870. IIEC/CUB/FEA Ex. 3.0 at 20. IIEC/CUB/FEA argue that the 37 FTE are not justified or adequately defended by AIC. Accordingly, IIEC/CUB/FEA recommend a

revenue requirement adjustment of \$4.3 million. IIEC/CUB/FEA Ex. 3.0 at 24; IIEC/CUB/FEA Ex.3.3.

IIEC/CUB/FEA argue a reduction of 37 employees reasonably aligns AIC's test year headcount with its actual level of employees on average from January 2018 through the present and reasonably aligns the headcount with the average budgeted level of employees from 2017 to 2019. IIEC/CUB/FEA Ex. 3.0 at 20. IIEC/CUB/FEA assert AIC's headcount staffing forecast is, by itself, inadequate proof that AIC it is capable of hiring these employees before the end of the test year, let alone that they likely will. IIEC/CUB/FEA Ex. 1.0 at 34.

IIEC/CUB/FEA note that AIC offered a schedule of when these positions might be filled and AIC witness Colyer admits, "the revised AIC staffing forecast and associated labor costs submitted in rebuttal reflects that it will likely take *through 2021* to hire the year end forecast of 902 positions given the challenges and unknowns presented by the pandemic through the remainder of 2020 and into 2021." AIC Ex. 33.0 at 24, 27. IIEC/CUB/FEA aver that many of these projected positions are expected to be filled late in 2021. IIEC/CUB/FEA assert that the Company expects the Commission to approve a revenue requirement for 37 positions for the full test year, when it has a poor record of filling positions now and in the past, and with the addition of a pandemic.

IIEC/CUB/FEA point out Ameren Corporation recently announced at an earnings call that it will make an effort to control its operating expenses that may impair its ability or willingness to hire additional employees. IIEC/CUB/FEA state that the "stringent hiring restrictions" are based on its desire to "exercise[e] financial discipline." IIEC/CUB/FEA Ex. 3.0 at 23. IIEC/CUB/FEA assert this statement from AIC's parent company suggests these 37 positions and others are at risk of not being filled, and quite possible more terminations will be in order, as Ameren Corporation observes "financial discipline."

IIEC/CUB/FEA argue that putting aside AIC's hiring record this year, and the earnings forecast proclamation, historically AIC did not fill all its budgeted FTE positions in 2018, 2019, 2020 (as of June 2020). IIEC/CUB/FEA Ex. 3.0 at 19, Table 3; IIEC/CUB/FEA Ex. 1.0 at 30, Table 6.

IIEC/CUB/FEA point out IIEC/CUB/FEA Ex. 3.0 at 19, Table 3 demonstrates in recent years, preceding the pandemic AIC has not made the hires it projected in its budget. IIEC/CUB/FEA argue that AIC budgeted 9 more than actual for 2018, 21 more than actual for 2019, and 38 more than actual through July 2020 and by July 2020, AIC had not filled 68 positions that had been budgeted since 2018. IIEC/CUB/FEA assert that in the face of a pandemic AIC expects the Commission to find that not only will the FTE level remain the same, but actually increase by over 4%, comparing June/July 2020 to the end of 2021. IIEC/CUB/FEA Ex. 3.0 at 19, Table 6.

IIEC/CUB/FEA assert relying on historical data when deciding on a future test year expense carries with it a great deal of weight because the Commission has often relied on historical expense levels, finding that "a historical average is a reasonable representative of future spending". *Ill. Am. Water Co.*, Docket No. 07-0507, Order at 22 (July 30, 2008).

IIEC/CUB/FEA assert that history is not on AIC's side, and neither are the current times. IIEC/CUB/FEA confirm AIC's headcount decreased by eight positions between the time it filed its direct case in January and April of this year. IIEC/CUB/FEA argue that AIC admits this occurred due to retirements, transfers, and terminations. IIEC/CUB/FEA Ex. 1.0 at 31. IIEC/CUB/FEA state that AIC lost 109 positions due to attrition in 2019 and 50 more by June 2020. IIEC/CUB/FEA Group Cross Ex. 2.0 at 1. IIEC/CUB/FEA argue retirements, transfers, and terminations are ongoing and will continue to impact not only future hiring but also AIC's ability to make the hires the Company supposes it can deep into 2021.

IIEC/CUB/FEA also note, the pace of hiring has continued to slow in 2020. The number of filled positions from December 2019 and June 2020 did not increase but instead dropped by three. IIEC/CUB/FEA Ex. 3.0 at 21. IIEC/CUB/FEA assert that of the 47 positions filled in 2020, nearly one-third were filled in January 2020 and only four were filled in June. IIEC/CUB/FEA Group Cross Ex. 2.0 at 2. IIEC/CUB/FEA point out that no virtual interviews took place May through August and AMS Human Resources have not conducted any screenings from May through August of this year, and no in-person interviews have occurred since March. *Id.* at 3, 4, 5. IIEC/CUB/FEA note that AIC posted 41 jobs in 2020 and only has filled about half of them. *Id.* at 7, 8. IIEC/CUB/FEA argue for the most part, the remaining positions in 2020 have been cancelled or are on hold, and no hire dates are shown for these positions.

IIEC/CUB/FEA contend that with little to defend its position, AIC witness Colyer plays the safety card, asserting IIEC/CUB/FEA witness Gorman was assuming AIC was not recruiting employees needed to maintain safe and reliable service. AIC Ex. 21.0 at 24-25. IIEC/CUB/FEA maintain that its witness Gorman corrected the Company, stating his adjustment was not budget driven, and that AIC would and should continue to ensure safe and reliable service. IIEC/CUB/FEA's position is AIC has not filled the budgeted positions in the past, is not doing so now, and has not shown it can in the test year. IIEC/CUB/FEA Ex. 3.0 at 20-21.

IIEC/CUB/FEA affirm, "the burden of proof to establish the justness and reasonableness of the proposed rates or other charges, classifications, contracts, practices, rules or regulations, in whole and in part, shall be upon the utility." 220 ILCS 5/9-201(c). IIEC/CUB/FEA assert that speculation and an estimate of additional FTE hires in a future test year, is not the kind of evidence upon which the Commission can or should rely.

d) Commission Analysis and Conclusion

The Commission agrees with Staff and finds that the Company's revised staffing forecast and associated labor costs are reasonable. The record shows that the Company replaced 47 positions from January 2020 to June 2020. The Commission also agrees with Staff's assessment that this information appears to support the Company's contention it can fill the 32 open positions between July 1, 2020 and December 31, 2021.

The record also shows that the Company has adjusted hiring practices to address the challenges presented by the pandemic and that there is a need for AIC to fill positions. The Commission approves AIC's revised staffing forecast and test year expenses associated with gas only labor.

5. 2021 Insurance Expense Increase

a) AIC's Position

AIC notes that it provided an overview of Ameren Corporation's insurance programs at a high level and an explanation of the anticipated casualty insurance market conditions for the 2020 renewals. AIC states that AIC witness French explained the Ameren insurance program is intended to insure against reasonable risks at cost-effective prices over the long term. AIC notes the AG recommended an adjustment to remove the "additional" projected 2021 costs of Ameren Corporation's insurance programs. AIC argues that the AG, however, did not provide any specific support for its adjustment and simply dismissed the evidence AIC provided.

AIC points out specifically, that AIC witness French testified Ameren's operating companies' businesses are capital intensive and many of the investments made to serve its customers are expected to be in service for many years. AIC states consequently, Ameren must make insurance decisions utilizing a long-term cost and benefit analysis and by doing so, Ameren ultimately seeks to minimize the cost of the risk over time. AIC asserts that AIC witness French also explained the six main categories of insurance policies Ameren carries: (1) Property and terrorism insurance (non-nuclear assets); (2) Excess liability insurance; (3) Directors' and Officers' (D&O) liability insurance; (4) Fiduciary liability insurance; (5) Nuclear insurance; and (6) Excess Workers' Compensation. Of these categories, five policies are allocated to gas operations: (1) Excess Property, including Terrorism; (2) Excess Liability; (3) Excess Directors & Officers; (4) Cyber; and (5) Owners & Contractors Protective.

AIC notes that AIC witness French stated the insurance adjustment presented on AIC witness Stafford's Schedule C-2.15 reflected the 2021 gas insurance forecast and reflected industry costs trends in the current insurance market. AIC witness French explained the changes in the insurance markets and described how the market for insurance coverage is hardening due to industry specific losses and more general losses, many of which are weather related events. AIC witness French noted that casualty and excess liability are experiencing significant changes impacting the insurance premiums. Accordingly, AIC witness French noted anticipation of the increases despite focused efforts on risk mitigation.

AIC notes that in rebuttal testimony, the Company provided the 2019 and 2020 insurance reports outlining the industry challenges AIC witness French explained in direct testimony. AIC witness French also explained Ameren's large renewals occur on September 1st for Excess Liability and Property. AIC witness French stated Ameren will receive premium indications in early August, then review the options available to match to its insurance philosophy and renewal strategy and to mitigate increases as much as possible. Additionally, AIC witness French noted Ameren will have estimates of the actual cost by surrebuttal for Excess Liability and Property. AIC states that the Company updated its estimates to actuals in surrebuttal testimony to check the reasonableness of its request for incremental insurance premiums. AIC witness French explained further adjustments to the insurance and presented Ameren Ex. 39.1 which reflected reasonable expectations for the insurance premiums consistent with actual premium costs, market trends, broker insight, and loss history. Accordingly, AIC respectfully requests the

Commission approve its insurance expenses since the record reflects reasonable forecasted costs based on the current premiums and market trends.

b) Staff's Position

Staff contends that the Commission should not adopt the AG's proposed adjustment to reduce a portion of AIC's "additional" increase to the forecasted 2021 insurance expense by \$2.367 million. AG Ex. 1.1, Sch. C-6.

Staff notes AG witness Selvaggio proposed this adjustment on the basis that the Company's forecasted "additional" increase over prior years' actual insurance expense was unsupported. AG Ex. 1.0 at 21-23. Staff contends that she maintained this adjustment in her rebuttal testimony but noted that AIC witness French (AIC Ex. 27.0) agreed to provide updated insurance premium estimates in early August, which AG witness Selvaggio agreed to consider. AG Ex. 4.0 at 29-30. Staff states that in surrebuttal testimony, AIC witness French responded to the AG's insurance expense adjustment, noting that AIC had taken additional steps to mitigate insurance costs and to support the projected insurance premiums for 2021, given the "hardening" of insurance markets during 2020. Staff explains that based on this additional premium information, as well as reductions in certain levels of insurance coverage, AIC witness French, in her surrebuttal testimony, proposed to reduce the amount of 2021 forecasted insurance expense by \$2.079 million. Ameren Ex. 32.1, page 2, column (e); Ameren Ex. 39.1. Staff states after giving effect to this adjustment, it appears that \$288,000 (\$2.367 million - \$2.079 million) of AG's adjustment remains contested.

Staff opines, based on the additional premium information and corresponding reduction to the 2021 forecasted insurance expense provided by the Company in the surrebuttal testimony of AIC witness French, the updated 2021 insurance expense appears reasonable to Staff. Staff recommends the Commission decline to adopt AG's remaining adjustment to insurance expense.

c) AG's Position

The AG argues that the Commission should remove AIC's projected 2021 premium increase expenses of \$288,000 because AIC has not presented sufficient evidence to establish that insurance premiums are likely to increase so substantially in 2021, and as such, these expenses are not reasonable or prudently incurred.

The AG notes that AIC has insurance policies that are reevaluated and renegotiated every year, meaning that AIC will seek coverage for most of its major policies in both 2020 and 2021. AIC Ex. 14.0 at 4. The AG also notes that the Company requires five types of insurance to maintain its gas operations: (1) Excess Property, including Terrorism; (2) Excess Liability; (3) Excess Directors & Officers; (4) Cyber; and (5) Owners & Contractors Protective. *Id.* at 4. The AG points out that AIC submitted revised premium projections where it estimated that 2020 and 2021 premium expenses would be significantly higher than its initial projections and requested an additional \$2.367 million to pay for 2021 premiums. AG Ex. 1.0 at 21; AIC WPC-2.15. The AG notes the Company attributed the increase in premiums to market hardening and severe weather events. AIC Ex. 14.0 at 8. The AG argues that AIC thereafter submitted an expense adjustment based on its initial renewals of 2020 policies and current market conditions, and the AG note this

adjustment showed that the premium for Excess Liability (by far the most expensive policy) increased by much less than projected (see AIC Ex. 39.1), resulting in a reduction of projected 2021 insurance premium expenses by \$2,078,782 to reflect the updated figures. AIC Ex. 39.0 at 2; AIC Ex. 39.1. The AG argues despite this, AIC requests an additional \$288,000 over its initial forecast after the adjustment.

The AG asserts that AIC wrongly argues that it should receive the \$288,000 because it presents evidence demonstrating that insurance premiums are likely to be significantly higher and because the AG “did not provide any specific support for its adjustment and simply dismissed the evidence AIC provided.” AIC IB at 78-80. The AG contends AIC’s argument flips the proper burden: AIC must prove that its expenses are reasonable, not the other way around. *BPI II*, 146 Ill. 2d at 196. Moreover, the AG maintains that AIC has presented little evidence to support its conclusion that insurance premiums will increase at the rate it claims.

The AG points out that the Company’s estimates that insurance premiums would increase are based on little, if any, concrete evidence. The AG argues that when AIC was asked to describe how it reached the percentage increases attached to its conclusion, AIC responded:

No specific work papers support the exact percentages of increase noted above but rather the work papers provided . . . give an idea of a market that is seeing a shrinkage in capacity as well as an increase in price. The overall increases are estimates based on industry news, utility industry group insights, consultations with brokers, and conversations with underwriters.

AG Ex. 1.2, Attach. I at 3.

The AG therefore argues that AIC presents no concrete evidence to support its conclusion that premiums will spike. Indeed, the AG notes further that when AIC did finally go to the market to obtain coverage, it found that its premium for Excess Liability was much lower than anticipated.

The AG also disputes insurance reports provided to the Company detailing challenges in the insurance industry as evidence of the likely increase in premiums. AIC IB at 79. The AG contends that these reports are essentially marketing materials which offer sparse analysis with regard to increasing premiums for regulated, utility gas operations. These materials list large losses incurred in the utilities space and little else. AIC Ex. 27.1 at 18-20; AIC Ex. 27.2 at 8-9. The AG asserts that it is impossible to conclude from these reports that AIC’s insurance premiums will increase by \$288,000 in a single year. If anything, the AG claim this evidence demonstrates AIC overestimated increases in insurance premiums for 2020. The AG requests the Commission exclude the amount requested in excess of the initial forecast, \$288,000, from the Company’s administrative and general expenses.

d) Commission Analysis and Conclusion

The Commission agrees with the Company and Staff and finds the proposed amount for insurance expenses to be reasonable. While the AG objects to the proposed

increase, the AG has failed to disprove the evidence provided by AIC regarding market trends and has failed to present sufficient evidence supporting why the proposed amount should be rejected. Additionally, the AG fails to demonstrate that insurance premiums will decrease or remain unchanged.

AIC explains the changes in the insurance markets due to losses and significant changes causing increased insurance premiums. Additionally, AIC explains the focused efforts on risk mitigation in anticipation of the increases. AIC provided updated insurance premium estimates in early August and proposed to reduce the amount of 2021 forecasted insurance expense by \$2.079 million. Staff agreed to this proposal and the Commission finds it reasonable.

The AG contests this amount, proposing an adjustment of an additional \$288,000, arguing that the evidence provided by AIC does not support the request for this amount. However, the Commission finds that the AG fails to disprove or invalidate the evidence presented by the Company or provide persuasive evidence to support its proposed adjustment. Accordingly, the Commission rejects the AG's proposed adjustment.

6. State Income Tax Increase

a) AIC's Position

AIC explains that the amounts of state and federal income tax expense included in AIC's revenue requirement are calculated by applying the statutory state and federal income tax rates effective in the test year to operating income before income taxes. AIC notes that before the statutory tax rate is applied, the amount of operating income is adjusted to remove the test year balances for amortization of federal investment tax credits and deferred income tax expense.

AIC forecasts, per the Illinois Income Tax Act ("IITA"), that the State of Illinois will increase its corporate income tax rate to 10.49%, effective January 1, 2021, and therefore has determined its test year revenue requirement based on that rate. AIC argues to the extent the rate does not change as expected, AIC will collect from or refund to customers any additional increases or decreases in income tax expense not reflected in the test year revenue requirement via the Company's Variable Income Tax Adjustment ("Rider VITA").

AIC states that the AG and Staff propose to adjust the state income tax rate from the Company's forecasted rate increase 2021 rate of 10.49% to the actual present rate of 9.5%, based on concerns that the income tax rate of 10.49% is speculative. AIC argues that Staff's and the AG's proposal should be rejected.

AIC's forecast of the corporate income tax rate is consistent with the actions of the Illinois legislature; in June 2019, Illinois Governor Pritzker signed Senate Bill 687 into law as Public Act 101-0008, the IITA. AIC notes that the IITA already incorporates the corporate income tax rate of 10.49% in anticipation of voters approving changes to the Illinois constitution in November 2020, and AIC's proposal is consistent with the legislature's approach. AIC states, moreover, in the event that the 10.49% tax rate does not go into effect in 2021, AIC will file a new Rider VITA percentage on April 20, 2021 that would return to customers any difference between the actual state income tax rate in effect in 2021 and the anticipated tax rate applied by AIC and the Illinois legislature.

AIC states that while Staff and the AG oppose the use of Rider VITA to refund income tax expense to customers, they do not argue or claim that customers will not be made whole by AIC's proposal. Instead, Staff and the AG opine that Rider VITA is meant to true up the tax rates reflected in base rates after there is a change in tax rates. AIC points out that neither Staff nor the AG proffer any evidence to support this interpretation of AIC's tariffs, and the language of the tariff itself does not impose any such limit or prohibition on the application of Rider VITA. AIC also points out that the Commission's order approving Rider VITA did not specify that it only applied after a tax rate change.

AIC maintains that Staff and the AG offer no compelling reason why the Commission should depart from the 10.49% forecast, as it is the rate adopted by the Illinois legislature and reflected in the IITA. AIC's Rider VITA ensures that customers will be made whole in the event that the anticipated tax rate does not take effect, a fact which Staff and the AG do not dispute. AIC asserts that the Commission should approve AIC's use of the 10.49% corporate income tax rate to determine its test year revenue requirement.

b) Staff's Position

Staff opines that the Commission should approve Staff's adjustment to reflect the current state income tax rate of 9.5%, rather than the Company's proposed 10.49% state income tax rate which is based on the rate that will be under consideration by voters in the November 2020 election. Staff states that there is no disagreement with how the state rate should be reflected in the revenue requirement; the only issue is which rate should be used.

Staff notes that while both Staff and the AG criticize the Company's proposal to increase the state income tax rate as being speculative, the Company claims that the increase is not speculative since the IITA is written to take effect in January 2021. Staff argues that the Company position ignores the fact that the rate will not go into effect *unless* the change in state income tax rate is approved by Illinois voters in the November 2020 election. Staff points out that while Illinois Governor Pritzker signed Senate Bill 687 into law as Public Act 101-0008 in June 2019, the rates set forth in that law do not take effect unless Senate Joint Resolution Constitutional Amendment No. 1 of the 101st General Assembly is approved in the November 2020 election. Staff contends that the Company itself agrees that the tax rate change is contingent upon voter approval of a constitutional amendment to allow graduated tax rates in Illinois. Staff argues that while the 10.49% tax rate is a legislated tax increase proposal, its reflection in the revenue requirement in this case is based on pure speculation of how the public will vote in November.

Staff notes that Staff and the Company also disagree on how Rider VITA can be used as a solution to any variance in the amount of tax collected. Staff states that AIC witness Stafford argues that, "[t]o the extent that the rate does not change as expected, any additional increases or decreases in income tax expense not reflected in the test year revenue requirement will be collected from or returned to customers via the Variable Income Tax Adjustment (Rider VITA)." Ameren Ex. 2.0 at 8. Staff avers Rider VITA was initially approved on a prospective basis to make AIC whole for the state and federal income tax changes that occurred in July 2017 and January 2018, respectively, which

were not reflected in the rates being charged to customers after those dates. Both Staff and the AG opine that Rider VITA is meant to true up the tax rates reflected in base rates after there is a change in tax rates. Staff states that according to AIC witness Stafford, if the proposed tax rate change is not passed by Illinois voters, Ameren would file a new Rider VITA percentage on April 20, 2021, to refund any over collection in taxes to rate payers beginning in May 2021. Staff argues that AIC witness Stafford neglects to acknowledge that for the period January 2021 through April 2021 under his proposal, Ameren would be over-collecting taxes from ratepayers at a higher, unapproved tax rate prior to returning any of those funds to ratepayers through Rider VITA. Staff contends in addition, the base rates charged to rate payers will continue to include the higher, unapproved state income tax until a Final Order is approved by the Commission after Ameren files its next gas rate case. Staff opines that it is unreasonable for the utility to propose base rates using an income tax rate that has not been approved to be in effect with the claim that they can return the amounts over-charged at a later date. Staff argues that in the event that the graduated income tax rates, and thus the increased state corporate income tax rate, is approved in the November election, the Company could file an information sheet to collect the difference between the actual tax rates and the rates charged in base rates through Rider VITA, consistent with how Rider VITA operated for the last income tax rate changes in 2017 and 2018.

c) AG's Position

The AG requests the Commission reject the Company's request to apply a state income tax rate of 10.5% rather than the existing rate of 9.5% because the Company's position is unreasonable, speculative, and disingenuous. The AG disputes Ameren's position that its approach is not speculative, and that the IITA, as amended by Public Act 101-0008 "already incorporates the corporate income tax rate of 10.49%." AIC IB at 81. The AG argues AIC's position ignores the critical fact that the law on January 1, 2021 will not change without approval of a constitutional amendment. In short, the AG asserts that until the votes are counted and announced, no one knows whether the state income tax rate will change next year. Thus, the AG argues Ameren's proposal is unreasonable and speculative. The AG notes that Staff agrees with the AG's position to apply the current state income tax rate of 9.50%.

The AG further argues that it is disingenuous for the Company to simultaneously assert that its Rider VITA would make customers whole "in the event that the anticipated tax rate does not take effect." AIC IB at 81. The AG contends AIC neglects the substantial regulatory burden an incorrect tax rate will impose on the Commission in implementing Rider VITA, including attempting to reconcile the actual tax rate with the rates included in the revenue requirement. According to the AG, Ameren's position is patently unreasonable, and the Commission should accept the AG's adjustments, as reflected in AG IB Sch. C-2.

d) Commission Analysis and Conclusion

The Commission agrees with the AG's and Staff's proposed adjustment to the state income tax rate. The state income tax rate of 9.5% is known and measurable. Any future changes to the state income tax rate are speculative. The Commission notes that AIC states that if the tax rate of 10.49% is not implemented following the referendum on

a constitutional amendment in November 2020, it will refund the difference to ratepayers via the Company's Rider VITA. Nevertheless, there is no reason to use a speculative state income tax rate in this proceeding that could require adjustment at a later date via Rider VITA should the referendum fail.

The Commission adopts the AG's and Staff's proposal to adjust the state income tax rate from the Company's forecasted increase for 2021 of 10.49% to the actual present rate of 9.5%.

7. Software Licensing Revenues

a) AIC's Position

AIC states that in 2019, Ameren entered into a cost sharing agreement with Union Electric Company d/b/a Ameren Missouri ("Union Electric") under which Ameren would provide Advanced Metering Infrastructure ("AMI") software for Union Electric to use and further develop. AIC explains that as part of this agreement, \$23.9 million was accrued to Ameren, and Union Electric obtained the right to utilize the software. As a result, Ameren's cost for the software was reduced by \$5 million. AIC says that \$5 million lowered net utility plant in service, which lowered the revenue requirement in this case. Ameren then allocated \$4.5 million of the remaining amount to its natural gas business in September 2019.

AIC notes that the AG argues that Ameren should reflect an amortized portion of the \$4.5 million from 2019 as revenue in the 2021 test year of this case to reflect the licensing agreement. AIC argues that because the AG's recommendation would violate the test year rules and the prohibition against retroactive ratemaking, the Commission should reject it.

AIC notes that as explained in AIC witness Stafford's testimony, the amount accrued to Ameren's gas operations "was first applied to reduce the cost of AIC's AMI software, which lowered the net utility plant in service (and so the revenue requirement) in this case." Ameren Ex. 19.0 at 25. Accordingly, "AIC's gas utility customers continue to benefit from the AMI software assets, and with this transaction the costs of those assets were reduced to \$0, which provides further benefit to customers as rates are reset in this proceeding." *Id.*

AIC states that the AG argues that Ameren should record an amortized portion of the \$4.5 million allocated to Ameren gas to the 2021 test year, to reflect Ameren's software licensing agreement with Union Electric from 2019. AIC notes that according to the AG, because the \$4.5 million out of period revenue was not used to reduce Ameren's requested revenue requirement in this proceeding, an adjustment is needed to recognize the allocation, amortized over two years, as an increase in other gas operating revenue. Specifically, "Instead of recording the \$4.5 million as revenue in 2019, AIC should have recorded the compensation in Account 254 Other Regulatory Liabilities to reduce the revenue requirement in a subsequent gas rate proceeding." AG Ex. 4.0 at 21.

AIC notes that the AG also suggests that AIC gas ratepayers have been funding the AMI capital investment and should also benefit from the proceeds of the cost sharing agreement recognized as revenue in 2019 but not reflected in the revenue requirement in Docket No. 18-0463 that used a 2019 test year.

AIC explains that, because the revenue was received in 2019 and was not a recurring credit, it cannot be included in the 2021 test year. AIC argues that doing so would violate the test year rules and the prohibition against retroactive ratemaking. The test year in this case is not 2019—it is 2021. AIC explains that because the revenue amounts are out of period, they should not be included in this rate case. AIC asserts that, on the other hand, if the AG is asserting that Ameren’s rates were set too high in its last rate case (Docket No. 18-0463, with a 2019 test year), and that a correction should be made in the current rate case to remedy those rates, this would constitute retroactive ratemaking.

AIC states that the Commission determines a utility’s revenue requirement based on revenues, expenses and plant investment over a “test year,” which may be either a historical or future twelve-month period. 83 Ill. Adm. Code 287.20. AIC explains that the test year rule requires that the utility’s revenues and expenses be measured over this finite, twelve-month period. AIC argues that use of a test-year in establishing rates prevents a utility from overstating its revenue requirement by mismatching low revenue data from one year with high expense data from another. *BPI II*, 146 Ill. 2d at 237-38. AIC notes that both the Commission and the Illinois Supreme Court have recognized that it is improper to adjust test year financial data to capture financial events that occur outside the test year.

AIC states that the Illinois Supreme Court defined the test year rule in *BPI II*. In that case, ComEd sought and received a Commission-approved accounting variance to defer for recovery in a future rate case certain pre-test year depreciation and decommissioning expenses (among other costs). AIC explains that in a later rate case, the Commission approved recovery of amounts related to the deferred expenses and the Supreme Court reversed the Commission. AIC notes that the Court held that, in the context of a general rate case, the deferred operating expenses were not properly recoverable in the utility’s rates. It found that recovery of pre-test year operating expenses, such as the depreciation and decommissioning expenses at issue, violated the Commission’s test year rules under which a utility could not “save up” operating expenses from one year for recovery in the test year of a later rate case. *BPI II*, 146 Ill. 2d at 240-41.

AIC states that *BPI II*’s test year rule analysis applies equally to revenues received outside the test year. AIC notes that the Commission has rejected, for example, an adjustment to offset test year operating income by tax settlement payments received outside the test year. *N. Shore Gas Co./The Peoples Gas Light and Coke Co.*, Nos. 95-0031/0032, 1995 Ill. PUC LEXIS 731, *36-37, 1995 Ill. PUC LEXIS 732, *53-54 (Orders, Nov. 8, 1995) (rejecting proposed adjustment to recognize in 1996 future test year a portion of the interest component of an Internal Revenue Service settlement which occurred during fiscal year 1993). *See also The Peoples Gas Light and Coke Co.*, Docket No. 91-0586, 1992 Ill. PUC LEXIS 376, *94 (Order, Oct. 6, 1992) (rejecting proposal to add to fiscal year 1993 payments received during fiscal years 1988 through 1990 as inconsistent with the concept of a test year); *N. Shore Gas Co.*, Docket No. 91-0010, 1991 Ill. PUC LEXIS 636, *21 (Order, Nov. 8, 1991) (same). *Cf. Ill. Bell Tel. Co.*, Docket No. 89-0033, 1991 Ill. PUC LEXIS 633, *98 (Order, Nov. 4, 1991) (adopting adjustment to reflect projected receipt of property tax refunds during the test year period). AIC maintains

that the rule works both ways: out-of-period revenues should not be recognized for the same reason that out-of-period expenses are not recognized under the rule.

AIC explains that the test year rule thus prohibits shifting revenue from one period (2019) to another (the rate case future test year, the twelve months ending December 31, 2021). AIC argues that because the transaction occurred in 2019—outside the test year in this rate case, and the AMI software revenue credit was not a recurring credit, the test year rule requires that the revenue *not* be considered for ratemaking purposes.

AIC notes that related to the test year rule is the rule against retroactive ratemaking: “Once the Commission establishes rates, the [Public Utilities] Act does not permit refunds if the established rates are too high, or surcharges if the rates are too low.” *BPI II*, 146 Ill. 2d at 243; *Citizens Util. Co. v. Ill. Commerce Comm’n*, 124 Ill. 2d 195 (1988) provides a particularly pertinent example of the rule. AIC notes that in that case, the utility treated depreciation on certain plant differently for federal income tax purposes than it did when it calculated its income tax expense for ratemaking. As a result, the utility claimed, for ratemaking purposes, an income tax expense greater than the taxes it actually paid. AIC explains that the higher tax figure was used to establish the utility’s rates for more than twenty years and the Commission ordered that this be corrected. The Illinois Supreme Court reversed the Commission, finding that the Commission’s reductions to the utility’s test year income tax expense and rate base for non-test period occurrences constituted unlawful retroactive ratemaking. *Citizens Util. Co.*, 124 Ill. 2d at 210-11.

AIC argues that the principle against retroactive ratemaking, therefore, precludes adjusting rates in this case downward to correct or remedy prior perceived deficiencies in a rate case revenue requirement. AIC asserts under the rule against retroactive ratemaking, rates cannot be adjusted downward now to “correct” for Ameren’s software licensing revenue not being included in the revenue requirement in Docket No. 18-0463. AIC asserts that to the extent the AG’s inclusion of the \$4.5 million resulting from Ameren’s software transaction in 2019 is meant to correct rates set in the prior case, it is improper retroactive ratemaking.

AIC notes that the AG claims that Section 1-102 of the Act authorizes the Commission’s departure from established law and procedure on “equitable” grounds. AIC states that Section 1-102 of the Act “is nothing more than prefatory. AIC states as such, it is of no substantive or positive legal force.” *Monarch Gas Co. v. Ill. Commerce Comm’n*, 261 Ill. App. 3d 94, 99 (5th Dist. 1994) (distinguished on other grounds). AIC maintains that the statute does not, as the AG argues, authorize the Commission to arbitrarily disregard well-established law regarding test year rules and retroactive ratemaking in order to administer some notion of “fairness.”

Further, AIC explains that even if the general declaratory language of Section 1-102 did contain an enforceable declaration of public policy, it would not control here. AIC argues that it is also a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject, the specific provision controls and should be applied. AIC asserts that thus, the general policy language reflected in Section 1-102 does not control over the specific Commission test year rule. AIC points out that the Company and Staff agree that it would not be proper or reasonable to reflect the AG’s

adjustment in the projected financial activity for the 2021 test year. AIC requests that the Commission reject the AG's proposed adjustment to impute AIC's 2019 software licensing revenues to the 2021 test year in this proceeding.

b) Staff's Position

Staff asserts that the Commission should reject the AG's proposed adjustment to reflect in the 2021 test year half of AIC's \$4.5 million gas jurisdictional revenue from the sale of a software license to Union Electric during 2019. Staff argues that the 2019 transaction giving rise to the revenue is outside of the test year in this case, even considering a two-year amortization period through 2020. Further, Staff maintains the transaction is not a part of normal recurring operations.

Staff states that AG witness Selvaggio opined in her rebuttal testimony that AIC should have recorded the revenue in Account 254 – Other Regulatory Liabilities to reduce the revenue requirement in a subsequent gas rate proceeding, and argued the \$4.5 million in revenue at issue should be amortized over two years as an increase in other gas operating revenue. Staff states that accordingly, the AG adjustment would increase other operating income by \$2.268 million in the 2021 test year, along with derivative impacts on the calculation of Cash Working Capital. AG Ex. 4.0 at 21. Staff explains that AIC witness Stafford disputed AG witness Selvaggio's accounting treatment on the basis that there was no regulatory mechanism in place, such as a rider, to justify recording the transaction in Account 254 as a regulatory liability. Staff points out that AIC witness Stafford also noted that for financial reporting purposes, there was no justifiable reason to record the revenue in a regulatory liability account when the test year in the current gas rate case is 2021 and the transaction occurred in 2019, which is outside the test year. Ameren Ex. 32.0 at 12-13.

Staff witness Pearce noted that the 2019 transaction that gave rise to the revenue is outside the 2021 test year, even considering a two-year amortization period through 2020. Staff argues that the transaction is not a part of normal recurring operations; therefore, it would not be proper or reasonable to reflect this adjustment in the projected financial activity for the 2021 test year. Staff Ex. 9.0 at 23. Staff avers that for these reasons, the Commission should not adopt the AG's proposed adjustment to reflect in the 2021 test year half of AIC's \$4.5 million gas jurisdictional revenue from the sale of a software license to Union Electric during 2019.

c) AG's Position

The AG argues that in 2019 in its transaction with Union Electric, AIC reduced the total cost of its AMI software by \$5 million, directing an unknown portion of that reduction to AIC's gas operations. AG Ex. 4.0 at 20. The AG alleges that AIC allocated the remaining \$18.9 million as 2019 revenue with \$14.4 million to its electric distribution, and \$4.5 million to its natural gas business. *Id.* at 20.

The AG contests this approach arguing that it is unreasonable and unfair to ratepayers. The AG proposes instead an adjustment to recognize the \$4.5 million, amortized over a two-year period, as an increase of other gas operating revenue, which is reflected in AG IB Ex. A at Schedule C-3. See *also* AG Ex. 1.0 at 16. The AG argues that Ameren's treatment of the revenue conveniently limits whatever benefit ratepayers

receive “to an unknown allocation of the \$5 million reduction in AMI capital investment.” AG Ex. 4.0 at 20. AG witness Selvaggio highlights that ratepayers have funded the Company’s AMI software “as an intangible asset for over five years,” providing recovery of depreciation expense and a return on the undepreciated balance. *Id.* at 21. The AG contends that it follows fairness, reason, and prudence that ratepayers should share in the proceeds from Ameren’s AMI licensing agreement; and that AIC’s decision to record the \$4.5 million as revenue in 2019, after the close of its 2018 rate case which used a 2019 calendar year test year. The AG opines that not reflecting this amount as a reduction in a later revenue requirement proceeding, is unfair and a manipulation of rate case timing.

The AG rejects both AIC’s and Staff’s argument that the Commission deny the AG’s adjustment because it is outside the 2021 test year and is not a recurring operation. The AG states that with regard to the argument that the AG’s adjustment is outside the test year, the AG argues that enabling Ameren’s approach would contravene the equitable principles which expressly underlie the Act, including “the fair treatment of consumers and investors” See, e.g., 220 ILCS 5/1-102(d)(vii)-(viii). The AG asserts that it would allow utilities to have ratepayers fund development of an asset – such as the AMI software here, to sell it to an affiliate, and then to select a test year outside the one in which the transaction occurred, which enables the utility to minimize the ratepayer benefit. The AG argues that this is a perverse outcome that contravenes the “fair treatment of consumers” demanded by the Act. *Id.* The AG implores the Commission to not sanction such conduct because to do so would be to prioritize a narrow, limited process rather than ensuring that the just and equitable principles and public policy of the Act are effectuated.

Further, the AG notes that this is the first rate case in which the recording of the 2019 transaction could be considered, and neither Ameren nor Staff offer any additional ways the AG and the Commission can ensure review of this transaction such that ratepayers are properly compensated for the sale of assets they funded. The AG asserts that Ameren’s approach then would only allow for a regulatory loophole to the detriment of Illinois ratepayers.

The AG also argues that Ameren’s statement that ratepayers benefited misses the point. According to the AG, AIC ignores the fact that the amount it applied to reduce the cost of the AMI software allocated to its gas operations is unknown. AG IB at 39-40; AG Ex. 4.0 at 20. (“Of the \$23.9 million [that AIC received from affiliate Union Electric Company d/b/a Ameren Missouri], AIC reduced the cost of AMI software by \$5 million with the AIC gas jurisdiction receiving an unknown portion of that reduction”). The AG thus argues that the benefit afforded to the Company’s ratepayers is potentially minimal because it remains unknown. The AG asserts that ratepayers should equitably share in the benefit of AIC’s proceeds from its licensing agreement with Union Electric, and that the Commission should thus adopt the AG’s proposed adjustment, as shown on the attached Schedule C-3.

d) Commission Analysis and Conclusion

The Commission disagrees with the AG’s argument and finds that AIC has provided proper support for excluding this revenue from the 2021 test year.

The AG proposes that \$4.5 million should be amortized over a 2-year period to reflect the licensing agreement with Union Electric and be included in the 2021 test year. The Commission concurs with AIC and Staff that the AG's claim that this revenue should be included in the current test year is unsupported by the record. AIC and Staff explain that there is no regulatory mechanism in place to justify recording this \$4.5 million as a regulatory liability as the AG suggests. The evidence shows that recording the revenue in 2021 when the transaction occurred in 2019 cannot be justified.

Additionally, the Commission finds that the AG's proposed adjustment violates the Commission's test year rules that require that expenses be matched against revenues within a single twelve-month period. The revenue was received in 2019 and it is uncontested that it was not a recurring credit, thus the Commission is not convinced that it would be appropriate to include it in the 2021 test year.

The Commission rejects the AG's proposed adjustment and finds that the \$4.5 million in revenue should not be included in the projected financial activity for the 2021 test year.

8. Rate Case Expense – Lead-Lag Study Costs

a) AIC's Position

AIC states that, as allowed by Commission Rules, the Company included in its rate case expense \$46,368.75 in costs associated with conducting a lead-lag study, which supports the CWC. AIC states that both the Company and Staff agree that this amount should be included in full.

AIC notes that the AG, however, seeks an adjustment of \$8,500 to rate case expense because, in the opinion of AG witness Selvaggio, the total cost of \$94,132.50 for the lead-lag study is unreasonable when compared to the \$50,000 cost of the lead-lag study submitted in Nicor's 2018 rate case, Docket No. 18-1775. AIC points out that AG witness Selvaggio claims that the lead-lag study used in Nicor's most recent gas rate case docket somehow constitutes the "best available" proxy to assess the reasonableness of the cost of the Company's lead-lag study in this docket. AIC contends that AG witness Selvaggio also expresses concern that the lead-lag study simply updates prior studies, claiming there does not "appear to be any reduction in cost for the same lead-lag study supporting the CWC requirement in two pending proceedings," (AG Ex. 1.0 at 26) and concludes that "at some point, there should be a reduction in cost for the preparation of a lead-lag study" (AG Ex. 4.0 at 32).

AIC argues that AG witness Selvaggio's proposed adjustment should be rejected as unfounded and without merit. As explained by AIC witness Stafford, AG witness Selvaggio fails to consider or acknowledge that: (1) that AIC is a combination utility that must present and defend the lead-lag study in two separate cases—gas and electric—rather than just one like Nicor; (2) there are inherent differences in scope, complexities, buckets of costs, analyses and other attributes of a lead-lag study conducted for just a gas utility like Nicor versus a lead-lag study conducted for a combination utility like AIC; and (3) there are differences in approaches used by consultants as well. Ameren Ex. 19.0 at 29.

AIC notes that, additionally, AG witness Selvaggio's alleged \$50,000 "proxy" was cherry picked from the most recent Nicor rate case without regard to the fact that, less than two years prior to Docket No. 18-1775, Nicor submitted a lead-lag study cost estimated at \$140,000. AIC asserts that if there is any inference to be drawn from comparison to the AG's "proxy", it is that the allocated costs of the lead-lag study, which are below the \$50,000 and far below the \$140,000, is reasonable and should be approved. AIC states that, indeed, no party, including the AG, has suggested the lead-lag study itself is insufficient or inadequate in any way or, conversely, that shortcuts should have been taken to reduce the study scope or the number or types of revenues and costs that were analyzed.

AIC states that, notably, Staff witness Pearce agrees with AIC witness Stafford, concluding "the lead-lag study in the most recent Nicor gas rate case (Docket No. 18-1775) has not been established as comparable to or as a reasonable basis for comparison to the lead-lag study in the instant proceeding." Staff Ex. 9.0 at 30. AIC argues that for this reason, "along with the reasons provided by AIC witness Stafford in his rebuttal testimony, [Staff] has not adopted the AG adjustment." *Id.* Furthermore, AIC contends the AG has not established that the cost of AIC's lead-lag study was unreasonable, and in fact the record shows that the study was reasonable. AIC argues that, as recommended by AIC and Staff, the AG's adjustment of \$8,500 should not be adopted.

b) Staff's Position

Staff maintains that the Commission should not adopt AG's proposed adjustment to reduce the cost of AIC's lead-lag study by \$8,500 based on the cost of the lead-lag study in the most recent Nicor gas rate proceeding, Docket No. 18-1775. AG Ex. 1.0 at 25-26; AG Ex. 1.1, Sch. C-8. The evidence in this case fails to demonstrate that the lead-lag study in the most recent Nicor Gas rate case (Docket No. 18-1775) is comparable to or is a reasonable basis for establishing the cost of the lead-lag study in this case.

Staff notes that AG witness Selvaggio argued that the Nicor lead-lag study was the best available proxy to assess the reasonableness of the cost of AIC's lead-lag study in the instant proceeding, which she asserted is too high given that AIC conceded the revenue lags and expense leads are identical in the two lead-lag studies performed in the instant proceeding and in the on-going AIC formula rate update (Docket No. 20-0381). Staff further argues that AG witness Selvaggio expressed concern that the lead-lag studies in the instant proceeding and in Docket No. 20-0381 simply update the studies provided in Docket Nos. 18-0463 and 18-0807. AG Ex. 4.0 at 31-32.

Staff states that AIC witness Stafford rejected AG witness Selvaggio's adjustment, noting that the Nicor lead-lag study is not a reasonable comparison because AIC is a combination utility that provides gas and electric service, while Nicor is a gas-only utility. Staff opines that he noted that the costs of AIC's studies are split between gas and electric functions; therefore, the cost included in AIC's gas revenue requirement is less than the costs included in Nicor's revenue requirement for either of Nicor's lead-lag studies performed for Docket Nos. 17-0124 and 18-1775. Ameren Ex. 32.0 at 18-19. Staff witness Pearce testified that AG witness Selvaggio did not establish that the most recent Nicor lead-lag study (Docket No. 18-1775) is comparable to or is a reasonable basis for comparison to the lead-lag study in the instant proceeding. Additionally, Staff witness

Pearce noted her recommendation regarding rate case expense in accordance with Section 9-229 of the Act was presented in her rebuttal testimony and included the full cost of AIC's lead-lag study at issue here. Staff Ex. 9.0 at 30.

Staff argues that for these reasons, along with the reasons provided by AIC witness Stafford in his rebuttal testimony, the Commission should reject the AG's proposed adjustment to reduce rate case expense related to the lead-lag study costs.

c) AG's Position

The AG contends that the Commission should reduce AIC's expenses for the creation of its lead-lag study used in this proceeding because the proposed cost is unreasonable. The AG points out that AIC prepared a lead-lag study for this proceeding that is nearly identical to the lead-lag study used to support the CWC requirement in Docket No. 20-0381, AIC's formula rate update. AG Ex. 1.0 at 25. AG states that the total charge for the lead-lag study split between the two proceedings is \$94,132.50 - \$46,368.75 charged to rate case expense in this proceeding and an additional \$47,763.75 charged in the formula rate update. *Id.* at 25. The AG asserts that Nicor conducted a similar lead-lag study in a gas rate case but spent only \$50,000. Docket No. 18-1775, Nicor Gas Ex. 19.3. The AG thus recommends that the Commission exclude \$8,500 of the \$94,132.50 expense because the price of the study is unreasonable.

The AG argues although AIC attempts to argue that certain factors make the cost reasonable (e.g., It is "a combination utility ..." (AIC IB at 87); "... inherent differences in scope, complexities, buckets of costs, analyses and other attributes ..." (*id.*); and "differences in approaches used by consultants ..." (*id.*)), the AG argues that the Company fails to articulate why any of these factors would result in dramatically different prices between Nicor's lead-lag study and the one commissioned by AIC. The AG contends AIC presents no evidence to sufficiently establish why its study is more time consuming for consultants, and thereby more expensive.

The AG asserts that the \$50,000 Nicor study is a just and fair comparison, especially given the lead-lag studies in this proceeding and Docket No. 20-0381 simply update the studies provided in Docket No. 18-0463 and in Docket No. 18-0807. AG Ex. 4.0 at 32. The AG asserts that AIC's study should be significantly less costly than it is, and that the Commission thus adopt the AG's recommended adjustment.

d) Commission Analysis and Conclusion

Based on the record, the Commission finds that the cost of the lead-lag study is supported by the evidence and it is reasonable. AIC explains that as a combination utility it must present and defend the lead-lag study for both its gas and electric components, resulting in differences in scope, complexities, costs, and analyses. AIC further explains that combination utilities may require more complex analysis by study consultants. AIC Ex. 19 at 29. Accordingly, the Commission declines to adopt the AG's proposed adjustment of \$8,500 to rate case expense.

The AG does not attest to any deficiency in the lead-lag study itself, but rather relies on the cost of the lead-lag study in Docket No. 18-1775, concerning Nicor, a separate and distinct utility. The AG draws several comparisons between the cost of the study in this case and the cost of the study in Nicor's 2018 rate case. The AG's proposal

is based on these comparisons. The Commission is not convinced that the cost of the lead-lag study in this case should be compared to the cost of the lead-lag study submitted in Nicor's 2018 rate case. Cases must be decided based on the record before the Commission and in this case the Company has shown the amount it allocated for its lead-lag study was reasonable. Additionally, the Commission notes that both the Company and Staff agree that the Company properly included in its rate case expense an allocated \$46,368.75 in costs associated with conducting a lead-lag study. For the reasons stated above, the Commission finds that these costs are reasonable and should be included in Ameren's rate case expense.

9. Small Volume Transportation Program Amortization

a) AIC's Position

AIC states in 2013, the Commission ordered it to implement a residential customer gas choice program, the Small Volume Transportation ("SVT") program. AIC continues that in 2015, the Commission ordered the Company to cease its implementation of the SVT program. The Commission recognized, however, that Ameren incurred incremental costs while complying with the directive to implement the SVT program, prior to the order to stop. AIC asserts it seeks recovery of \$1.6 million in these incremental SVT costs in this proceeding.

AIC notes that in Docket No. 13-0192, the Commission approved implementation of the SVT program and recovery of the forecast test year costs for that program (which did not include the \$1.6 million at issue in this proceeding), but recognized that tariff, operational, and customer protection issues remained to be addressed. AIC argues that it began working on implementation, and a subsequent proceeding, Docket No. 14-0097, was opened to review AIC's proposed SVT tariffs and address the unresolved issues. AIC explains that as that docket unfolded, AIC incurred Phase 2 design costs—the costs it seeks to recover here—for work to determine the additional amount needed to complete Phase 2 of the SVT program. AIC states that during the proceeding in Docket No. 14-0097, it determined that the estimated costs for the SVT program would be significantly higher and AIC submitted the higher cost estimate to the Commission for review.

AIC states that the Commission's decision to halt the SVT program was based on a concern that these estimated costs outweighed the benefits. AIC explains that when the Commission ordered Ameren to stop implementation of SVT, the Commission recognized that Ameren had incurred certain additional costs to date, and that they should be reviewed in the "proper forum."

AIC claims that the forum is this case, and AIC has proposed an adjustment to amortize over two years \$1,563,003 in costs incurred by the Company related to implementation of the SVT Program - representing incremental costs incurred prior to the Docket No. 14-0097 Order directing AIC to stop implementing the SVT program. AIC argues that the Commission should approve recovery of these costs for three main reasons: (1) the costs sought here are reasonable in amount and prudently incurred; (2) AIC incurred the additional costs to comply with a Commission directive that was then halted, and AIC should not be stranded with these costs; and (3) the costs were beneficial: AIC incurred the \$1.6 million on design costs that helped AIC, the Commission and other stakeholders understand the ultimate cost of the SVT program.

AIC states that in Docket No. 13-0192, the Commission approved implementation of AIC's SVT Program and the recovery of test year SVT costs in rates. In the Final Order in that docket, the Commission stated: "In this instance, the Commission believes the record contains a sufficient showing that the potential benefits of an SVT program in AIC's service territory, while not certain, are likely." Docket No. 13-0192, Order at 246. AIC notes that the Commission also approved AIC's recovery of \$10.6 million in projected costs for Phase 1 of the SVT program. Phase 1 provided services for both sales and transportation customers, which represented a conservative estimate for the costs to be incurred in the 2014 test year in that case. In the fall of 2012, preliminary program cost estimates ranged from \$12-22 million; the originally-submitted Docket No. 13-0192 rate case estimate for the SVT program was \$7 million.)

AIC notes, however, the Commission recognized that not all operational, tariff design, and other issues regarding the SVT tariffs had been fully addressed (Docket No. 13-0192, Order at 246) and while the Commission concluded that it was in the public interest to approve an SVT program, the Commission also found additional consumer protections were needed. Docket No. 13-0192, Order at 246. AIC explains that it was then directed to initiate a separate proceeding that would allow full evaluation of the remaining issues presented by an SVT program.

AIC proffers that the Docket No. 13-0192 Order concluded that it was in the public interest to approve an SVT program, but with additional consumer protections. AIC states that the Order also required a separate proceeding to address operational, tariff design, and other related issues. That separate proceeding, in which AIC provided finalized tariffs based on Ameren's positions, was Docket No. 14-0097. *Ameren Ill. Co. d/b/a Ameren Ill.*, Docket No. 14-0097, Order (July 8, 2015). AIC argues that during the proceedings in Docket No. 14-0097, AIC determined that the operational, tariff design, and other related issues, including requests by customer advocates, Staff, and suppliers would increase the cost of the program. AIC explains that on July 11, 2014, the Company filed supplemental testimony, stating that the estimated cost to implement its SVT program had increased from the approximately \$10.6 million originally projected, to over \$32 million. Docket No. 14-0097, Order at 3. AIC states that the additional amount, \$21 million, was required to complete Phase 2 of the SVT program in light of the Docket No. 13-0192 Order's findings and program components proposed in Docket No. 14-0097. AIC explains that in its supplemental testimony, Ameren asked the Commission to decide whether the Commission considered it advisable for Ameren to proceed with the program in light of the increased estimated cost. Docket No. 14-0097, Order at 3.

AIC states that in its July 2015 Order in Docket No. 14-0097, the Commission concluded that the Company "should stop implementation of the current SVT Program, with costs incurred to date to be reviewed in the proper forum." Docket No. 14-0097, Order at 32. AIC states that, as the Order makes clear, the Commission was both aware of the estimated cost increases to SVT and the fact that AIC had incurred costs beyond the \$10.6 million already approved. *Id.* at 33. AIC argues that the Commission also made other findings related to future actions to be taken by the Company for evaluation of a gas supplier customer choice program. *Id.* AIC notes that at the time of the Docket No. 14-0097 Order, AIC had incurred approximately \$1.6 million in additional SVT costs that had not yet been reflected in rates.

AIC urges that the question now before the Commission is whether this is the proper forum to consider “these costs incurred to date”, and if so, whether those costs are recoverable.

AIC asserts that, first, this is the “proper forum” and states that “a proper forum” to review costs incurred to date for the SVT program is either a proceeding to further evaluate gas supplier customer choice, or a gas rate case. AIC argues that since the issuance of the Docket No. 14-0097 workshop Staff Report in December 2015, the Company has not been required to take further action with regard to initiating or implementing a gas supplier customer choice program. So, AIC asserts, a rate case is an appropriate forum.

AIC acknowledges that Staff questions why AIC did not seek recovery of these costs in its 2018 rate case. AIC explains that the Company has filed two gas rate cases since the December 2015 Staff Report: Docket No. 18-0463 and this case. AIC argues that the Company believed at the time it was preparing its 2018 rate case in the late fall of 2017 (less than two years after the Docket No. 14-0097 Staff Report), the language of the Staff Report offering certain “paths for the Commission’s consideration” still left open the possibility of some future Commission action. AIC continues, stating, and even if Docket No. 18-0463 was a proper forum, there is no reason to conclude that this docket is not also a proper forum—the window for recovery was not limited to just Docket No. 18-0463. AIC states that because the Staff Report issued in Docket No. 14-0097 in December 2015 left a number of questions opened, but has never been acted on or addressed by the Commission, it is not unreasonable that AIC would believe, less than two years later in the fall of 2017 when it was preparing its 2018 rate case, that the possibility that the Commission might take action remained open.

AIC states that Staff concedes that the Commission has jurisdiction to consider the SVT costs here and in discovery Staff agreed the \$1.6 million Phase 2 SVT costs that Ameren seeks to recover in this docket were “costs incurred to date” as referred to in the Commission’s Order in Docket No. 14-0097. AIC argues that the only remaining question for the Commission is whether the costs are recoverable.

AIC notes that there appears to be no dispute that the \$1.6 million in SVT costs was reasonable in amount for the High Level Design performed and it was prudent for AIC to incur them. AIC argues that it incurred the Phase 2 SVT costs in compliance with the Commission directive to implement an SVT program and while AIC was still subject to that directive. AIC asserts that based on the situation and information available at that time, it was prudent to incur them. *Ill. Power Co. v. Ill. Commerce Comm'n*, 245 Ill. App. 3d 367, 374 (3d Dist. 1993) (finding that in determining prudence, utility decisions and actions must be reviewed in the light of the facts available at the time they occurred or were made). AIC further alleges that no party contends the costs were imprudent, but rather, as AIC’s testimony explains, the costs provided a benefit to the Commission and stakeholders to understand the ultimate cost of the SVT Program.

AIC states that the \$1.6 million in SVT expenditures were directly related to development of the High Level Design for the remainder of the SVT program that the Commission had directed AIC to implement. AIC avers the completion of a High Level Design was needed to accurately demonstrate to Staff, the Commission and other

interested stakeholders the revised cost estimates for the entire scope of the SVT program, including elements of the SVT program scope not identified until the Docket No. 14-0097 workshops in 2015. AIC states that given the expected timeframe for implementation of the overall SVT program, AIC had no choice but to move forward aggressively with a design project schedule, incurring the \$1.6 million in costs for the High Level Design Phase 2 effort, so as to properly assess the architecture and design of remaining IT components given the scope of the SVT program.

AIC explains that the \$1.6 million in Phase 2 design costs went towards the design and cost estimates for program features that suppliers sought in both the initial phase of Docket No. 14-0097 and the Docket No. 14-0097 workshops, and so helped inform both the interested parties and the Commission about expected cost impacts. AIC states that the results of the Phase 2 design can be seen in both a cost breakdown for the \$21 million in Phase 2 costs and a summary of program features requested by other parties in the Docket No. 14-0097 workshop process that also would increase costs that AIC provided.

AIC argues that to suggest that it must incur costs, even if they do not ultimately result in systems that serve customers, but then subsequently deny recovery of those costs after the Commission cancels the program, is to suggest that the Commission could simply direct utilities to implement programs, then reverse that directive, and strand the resulting costs, which were borne by the utility in good faith reliance on the Commission's directive. AIC states that such an outcome would be arbitrary and contrary to sound regulatory policy. AIC notes that the Commission recently affirmed as much in its Order on NextGrid participation costs in Docket No. 19-0436 where the Commission recognized “the Commission’s launch of the NextGrid collaborative and its direction to the electric utilities to provide the facilitator funding caused AIC to incur the costs.” Docket No. 19-0436, Order at 40. AIC argues that cost recovery is therefore appropriate, provided that the costs were prudently incurred and reasonable in amount. *Id.* AIC states that the Commission explained, “given that the Commission, in initiating the NextGrid collaborative, considered it to be a prudent use of time and resources, it appears appropriate that the Commission’s directive that the electric utilities provide the funding for the expert, independent third party facilitators should be given substantial weight in determining whether these costs should be recovered in rates.” *Id.* AIC maintains that to find otherwise “would mean that routine costs incurred by the utility for participating in Commission-administered, but non-docketed, workshops are not actual costs that can be recovered through the formula rate.” *Id.*; see also *Citizens Util. Bd.*, 166 Ill. 2d at 121 (finding that the Commission properly authorized rate recovery of coal-tar clean-up costs where there was “extensive evidence that utilities are required to incur coal-tar cleanup expenses under CERCLA and similar Illinois environmental laws.”). AIC asserts that although SVT was addressed in docketed proceedings, the principle is the same—costs incurred at the Commission’s directive should be recoverable—and a similar conclusion is warranted here.

AIC notes that in rebuttal, Staff witness Rearden testified “it is unclear why the Commission was not presented with the Company’s best cost estimates for the project. AIC states that, had the Commission had reliable information, the Commission may not have been disposed to approve SVT.” Staff Ex. 13 at 5. AIC argues that Staff’s main concern thus appears to be that the \$1.6 million at issue should not be recovered because

AIC should have provided a higher cost estimate for SVT sooner, which could have caused the Commission to halt SVT sooner and AIC could have avoided incurring the \$1.6 million expenditure altogether. AIC asserts that Staff's concern, however, is speculative.

AIC states that in Docket No. 14-0097, the Commission considered all of the revised cost estimates that Staff now points in this proceeding. AIC opines, as the Docket No. 14-0097 Order notes, "However, after completion of the Phase 2 Design Phase in May 2014, Ameren suggests it became clear that the prior estimates understated the costs and implementation timeline of the SVT Program. Specifically, during the Phase 2 Design Phase, IT identified extensive complex changes to several critical customer applications, as well as the need for extensive testing on existing functionality." Docket No. 14-0097, Order at 6. AIC argues, yet, the Commission did not conclude that Ameren failed to propose its best and most accurate estimate for an SVT program in Docket No. 13-0192, or that any incremental costs should not be recovered. AIC states to the contrary, in its Order in Docket No. 14-0097, the Commission expressly recognized that there were costs incurred that should be considered in the future. AIC avers Staff's claim that the costs AIC proposes for recovery should be disallowed because AIC failed to propose its best and most accurate estimate for an SVT program in Docket No. 13-0192 essentially asks the Commission to revisit its conclusions in Docket No. 14-0097 and arrive at a different conclusion than the one made.

AIC notes the Order in Docket No. 14-0097 makes clear that AIC was continuing to work to implement a SVT program at the time of the Order. AIC also suggests the Order recognized as much, and that AIC had incurred costs to date that should be reviewed. AIC notes that the Commission made these findings in full awareness of the projected cost of an SVT program and even if AIC had estimated a higher SVT cost in the 2013 rate case, the \$1.6 million at issue here would still have been necessary. AIC opines that performing the design work would have been needed to understand the cost of SVT program features that interested parties in Docket No. 14-0097 wanted to see adopted.

AIC argues that Staff's concerns that the SVT costs were for a system that is not used and useful are also not justified because the \$1.6 million that AIC seeks to recover was incurred by AIC on High Level Design to determine the additional amount needed, \$21 million, to complete Phase 2 of the SVT program. AIC states thus, the \$1.6 million Phase 2 costs had value to the extent they provided the basis for a Commission decision to avoid significant additional costs, which would have been incurred by AIC customers if the SVT program had not been suspended.

AIC argues that while the SVT Phase 2 costs were for the design of systems that were not ultimately used to provide service to customers, Staff's definition of used and useful is too restrictive because the costs were incurred to implement a program that the Commission directed AIC to implement. AIC states that if the SVT program had continued, the Phase 2 costs would have been incurred to design systems that would have ended up serving customers. AIC argued in Docket No. 14-0097 that a lack of demonstrated customer benefits, coupled with an estimated \$30 million+ total cost for the SVT program (Phase 1 and 2), would have potentially resulted in an expensive program with few participants. Thus, AIC asserts, the \$1.6 million Phase 2 costs also had value to the extent they provided the basis for a Commission decision to avoid significant

additional costs, which would have been incurred by AIC customers if the SVT program had not been suspended.

AIC maintains that the SVT costs that AIC seeks to recover here were reasonable and necessary costs to determine the design of the SVT program, identify the total scope and cost of that program, and otherwise continue to comply with the Commission's directive to implement that program.

b) Staff's Position

Staff notes that in AIC witness Stafford's direct testimony, AIC proposes an adjustment to amortize \$1,563,003 in unrecovered costs related to the SVT program. AIC Ex. 2.0 at 18-19. Additionally, Staff observes that in its Final Order in Docket No. 13-0192, the Commission approved the SVT program and permitted AIC to recover approximately \$10.6 million from ratepayers to develop and administer the program. Docket No. 13-0192, Order at 245-250. Staff explains that before the SVT program was implemented by AIC, the Commission halted SVT development in its Final Order in Docket No. 14-0097. Staff notes, however, AIC had already spent funds beyond the amount approved by the Commission. Staff argues AIC was directed by the Commission to seek recovery of those funds in the proper forum (Docket No. 14-0097, Order at 32-33) and AIC has sought to recover those funds as part of this proceeding.

Staff recommends that the Commission deny AIC the cost recovery requested, because AIC has failed to show that its investment was used and useful. The spending failed to result in regulated services that AIC is providing or provided to its customers. Staff Ex. 6.0 at 3.

Staff states an SVT program is designed to enable residential and small commercial customers to purchase commodity gas from independent and unregulated suppliers, known as alternative gas suppliers ("AGS"). Staff explains that in such a program, customers electing to purchase supply from AGS continue to pay the utility for gas delivery services, but they purchase the actual gas from an AGS at rates which are not directly regulated by the Commission. *See, generally*, 220 ILCS 5/19-100, *et seq.* ("Alternative Gas Supplier Law"). Staff says, in contrast, sales customers purchase commodity gas from the utility at the utility's cost. *Id.* at 3.

Staff states as noted above, the Commission granted AIC permission to recover approximately \$10.6 million from ratepayers to initiate an SVT program as well as requiring AIC to file SVT tariffs. Docket No. 13-0192, Order at 246. Staff avers AIC filed those tariffs in the SVT tariff docket on January 31, 2014. Staff continues, stating, after Staff and intervenors filed direct and rebuttal testimonies, AIC filed supplemental direct testimony indicating that it was going to incur substantially greater costs than it had initially estimated to implement its SVT program and accordingly, requested that it not be required to implement an SVT tariff. Docket No. 14-0097, Ameren Ex. 5.0 at 2. Staff argues that rather than allowing AIC to incur \$21 million in additional costs to be recovered from ratepayers, the Commission ultimately determined that AIC should cease the implementation of the SVT program. Docket No. 14-0097, Order at 32. Staff alleges that AIC had expended approximately \$1.6 million in costs that it had not received permission to recover in regulated rates between the date the Commission approved recovery of \$10.6 million and the date the program was cancelled. Staff notes that AIC now proposes

to add these costs to its rate increase request in this rate case. Staff Ex. 6.0 at 4. Staff argues that AIC did not request recovery of the \$1.6 million in its 2015 (Docket No. 15-0142) or 2018 (Docket No. 18-0463) rate cases.

Staff notes AIC posited that the reason it did not file for recovery in the 2018 rate case was because the SVT docket remained open for additional comments or additional Commission action during the 2018 rate case docket. Staff argues that as a result, the Company wanted to wait until the filing the subsequent rate case, which is the instant proceeding, to seek recovery of the SVT costs. *Id.* at 5.

Staff states that AIC was not prevented in any way from seeking SVT cost recovery in the 2018 rate case and the Commission's Order in Docket No. 14-0097 was a final Order and the Commission denied Applications for Rehearing on August 20, 2015.

Staff states that AIC termed those expenditures as belonging to "Phase 1" in the SVT tariff docket. Ameren Ex. 5.0 at 7. Staff also states AIC noted that AIC estimated that an SVT program would cost \$12-\$22 million, and that AIC proposed a figure at the lower end of the range "in recognition of the conservative nature of the ratemaking process." *Id.* at 7.

Staff argues that according to AIC, the Phase 1 expenditures led to productive services for AIC customers. In addition, AIC stated that it will retire the system that those expenditures financed by the end of 2020. Staff Ex. 6.0 at 6. Staff maintains that AIC's Phase 2 spending did not result in services that are used and useful to delivery-services customers, because AIC still does not have an SVT program. Staff points out that AIC admitted that the proposed adjustment of \$1.6 million is "related exclusively to Phase 2[.]" Staff Ex. 6.0 at 7. Staff argues that accordingly, unlike Phase 1 expenditures, the unrecovered costs represent resources that AIC has expended that did not provide any services of any description to Ameren's customers. Thus, the Commission should deny the proposed adjustment. *Id.* at 7.

Staff notes that in response to Staff's arguments that the unrecovered Phase 2 costs were not prudently incurred, AIC made two arguments: first, that the costs were unavoidable, as the Commission ordered AIC to implement SVT (AIC Ex. 28.0 at 5) and second, that it was required to better estimate SVT costs (*Id.* at 6).

Staff argues that neither of these contentions has merit because the Commission included \$10.6 million in AIC's rates in the 2013 rate case when it ordered AIC to implement an SVT program. Staff opines the record in that docket is bereft of references to any indication that this was to be accomplished in two phases. Staff asserts it is only with AIC's supplemental direct testimony in Docket No. 14-0097 that AIC employed these terms. Staff notes that the only conclusion that can be drawn from this is that AIC failed to fully inform the Commission about the costs and benefits of an Ameren SVT program at the time the Commission approved the program. Staff Ex. 13.0 at 3.

Staff notes that AIC also argued that in Docket No. 14-0097, stakeholders requested features that increased the program's cost. AIC Ex. 40.0 at 3. Staff notes that AIC witness Seckler offers the example of Utility Consolidated Billing ("UCB"), in which Ameren would issue a single bill for both delivery charges and commodity charges of the gas seller. Staff argues that the tariff that the Company proposed in Docket No. 13-0192

– and Ms. Seckler sponsored in her testimony – is of record in this proceeding. Staff Cross Ex. 9.0. Staff maintains that a review of this draft tariff reveals numerous references to UCB, establishing detailed terms and conditions under which AGS may avail themselves of UCB. Docket No. 13-0192, Ameren Ex. 26.1-Staff Cross Ex. 9.0, Sections 4.B.4, 9.B.

Staff claims that no conclusion is possible other than that Ameren failed to propose its best and most accurate estimate for an SVT program when it received Commission approval to recover those costs and since the additional expenditures did not result in services that are used and useful, the Commission should disallow cost recovery.

c) Commission Analysis and Conclusion

The Commission notes that AIC seeks recovery of \$1.6 million in incremental costs, amortized over two years, related to the SVT program ordered by the Commission in Docket No. 13-0192 in 2013. At the conclusion of Docket No. 13-0192, there were concerns with the tariff related to operational and consumer protection issues that needed to be resolved. Docket No. 14-0097 was initiated to review AIC's proposed SVT tariff and address the unresolved issues. AIC argues that it began working on implementation of the program and incurred Phase 2 design costs before the Commission directed AIC to stop implementation of the program in Docket No. 14-0097, which it is seeking to recover in this proceeding. AIC explains that it did not attempt to recover these costs in an earlier rate case proceeding because it believed at the time there was a possibility of future Commission action.

Staff argues that AIC should not be allowed to recover its Phase 2 spending because AIC did not implement a SVT program and the Phase 2 spending did not result in services that are used and useful to delivery services customers. Staff also argues that recovery should be barred because the Company did not timely seek recovery in 2018 and contends that, contrary to the Company's argument, it was not prevented from seeking recovery in its 2018 rate case because there was a Final Order issued in that docket. Staff does not dispute that a rate case is the proper forum for recovery of the spending costs, but rather argues that AIC should have attempted to recover these costs in an earlier rate case proceeding.

While the Commission agrees with Staff that the Company could, and perhaps should, have sought recovery of the SVT costs in the 2018 rate case, the Commission finds that the costs at issue are still properly raised in this proceeding. The Commission notes that it is uncontested that a rate case is the proper forum for recovery of AIC's Phase 2 spending and it is the Commission's view that the window for recovery was not limited to the 2018 rate case. The Commission finds AIC's assertions that it did not raise the issue earlier due to the uncertainty regarding the future of the SVT program persuasive and concludes there is insufficient evidence to deny AIC's recovery of these costs in this proceeding.

Additionally, the Commission recognizes that prior to the Commission's directive in Docket No. 14-0097 to AIC to stop the implementation of the SVT program, the Company incurred additional costs that it had not yet recovered. Staff argues that these costs are not reasonable because AIC does not have a SVT program therefore there is no ratepayer benefit. The Commission disagrees, however, that this is the proper method

to assess whether the costs should be recovered. As AIC noted, AIC incurred the Phase 2 SVT costs due to its compliance with a Commission directive to implement a SVT program, a program which the Commission acknowledged in Docket No. 13-0192 was expected to benefit customers. The SVT costs that AIC seeks to recover in this proceeding were reasonable costs to determine the design of the SVT program, identify the total scope and cost of the program, and otherwise continue to comply with the Commission's directive to implement the program. Accordingly, the Commission finds that despite the timing of AIC's request for recovery, the Company's proposal to recover an amortized amount of \$1.6 million for the SVT Phase 2 costs should be approved.

10. Pension and OPEB Expense

See Section II.B.4.

11. AMS Costs

a) Labor Allocation Factor

i. AIC's Position

AIC explains that it obtains many of the business and corporate services that it needs to operate and to serve Illinois customers—such as human resources, technology, communications, and legal services, among others—from AMS, an Ameren-affiliated centralized services company organized under the Public Utilities Holding Company Act and regulated by the Federal Energy Regulatory Commission (“FERC”). 42 U.S.C. 16451, *et. seq.* AIC explains that AMS services are largely invisible to AIC's retail customers, but they are essential to the provision of safe and reliable utility services. If AIC does not obtain the services that it needs to operate from AMS, it must incur costs to perform the services itself or contract with an outside vendor other than AMS to provide the services.

AIC explains that services transactions between AIC and AMS are governed by a decades-old General Services Agreement (“GSA”) approved by the Commission under Section 7-101(3) of the Act, 220 ILCS 5/7-101(3), and recently reapproved as amended in 2017 in Docket No. 16-0287. *See Ameren Ill. Co. d/b/a Ameren Ill.*, Docket No. 16-0287, Order at 25 (Apr. 7, 2017). Pursuant to the GSA, AMS charges AIC and the other Ameren affiliates that use AMS' services only AMS' actual costs to provide those services. That is, there is no mark-up for “profit.”

AIC further explains that the GSA classifies AMS charges as “direct,” “direct allocated,” or “indirect.” “Direct” charges reflect the costs of AMS services that benefit only one Ameren affiliate. Those costs are charged only to that affiliate. “Direct allocated” charges reflect the costs of AMS services that benefit two or more Ameren affiliates. Those costs are allocated among the benefiting affiliates based on allocation factors described in the GSA and approved by the Commission, such as the affiliates' most recent calendar year number of customers or miles of transmission line. AIC notes that, consistent with the GSA, AMS annually recalculates the allocation factor percentages that it uses to allocate the costs of its services among the Ameren affiliates to reflect changes in the underlying numbers.

AIC states that notably, the amended GSA approved by the Commission in 2017 was the result of a three-month, eight-workshop process and a year-long docketed

proceeding. AIC explains that both processes involved representatives of AIC, Staff, CUB, and IIEC—including IIEC/CUB/FEA's witness Gorman in this proceeding. See Docket No. 16-0287, Order at 2. AIC states that the result of those processes was a GSA that requires AIC to annually report extensive data to the Commission regarding its AMS charges. *Id.* at 25; Ameren Ex. 3.1, App. C (approved Amended and Restated GSA).

AIC explains that it must provide the Commission—every year—a report summarizing the monthly AMS charges to the Ameren affiliates during the preceding year. AIC must also provide a detailed report of every prior-year AMS charge by the service description (service request project name and number); the AMS functional area (or department) that provided the service; the affiliate(s) charged; whether the charge was a direct or indirect charge and, if a direct allocated charge, the allocation factor used to allocate the charge among multiple affiliates; the FERC account the charge was recorded to; whether the charge represents AMS employee labor costs or non-labor costs, such as unaffiliated vendor costs; and whether the charge was attributable to AIC's gas distribution operations or its electric transmission and distribution operations. AIC must also provide a variance report that identifies and explains any material variance—10% or more and \$1 million or more—in any AMS functional area cost charged to AIC over the previous year's cost. GSA, App. C at ¶ 4.

AIC states that, additionally, per the amended GSA, it must annually provide a template of all allocation percentages to be used to charge AMS costs to and among the Ameren affiliates. The template may be updated at least annually. See *id.*, GSA, Appx. C at ¶ 7. Further, the GSA requires AIC to annually explain all material AIC allocation percentage variances, that is, +/- 10% or more from the prior calendar year. *Id.*

Finally, AIC explains, the amended GSA requires AIC to annually submit to the Commission an AMS Internal Audit report, which is an enhancement of the Internal Audit report of AMS's Service Request System, Service Request policies, operating procedures, and controls that AIC has provided the Commission, every year, since its predecessors' 2006 rate cases. See *id.*, GSA, App. C, Para. 3; *Cent. Ill. Power Co.*, Docket No. 06-0070, Order at 67 (Nov. 21, 2006). Specifically, AMS Internal Audit must now report to the Commission, that: (i) internal controls are adequate to ensure costs associated with transactions under the GSA are properly and consistently allocated and billed; (ii) AMS employees' time reporting is properly charged to service request projects for allocation to AIC; (iii) allocation factors are correctly calculated; (iv) all costs charged under the GSA are determined in accordance with allocation factors; (v) all charges under the GSA reflect AMS's actual costs; and (vi) AMS employees are trained with respect to their responsibilities under the GSA at least biennially. See Docket No. 16-0287, GSA, App. C at ¶ 3.

AIC explains that in this proceeding, AIC forecasts that its 2021 gas jurisdictional AMS costs, both expense and capital costs, before any ratemaking adjustments, will be approximately \$38.2 million. That reflects an approximately \$10 million decrease since 2018, the last full year of actual AMS costs available at the time of the February 2020 rate case filing. To develop that forecast, AIC explains, it used the actual 2019 AMS cost allocation factors, which were the most recent available at the time of this docket filing in February 2020.

AIC explains the reasons for the change—namely a decrease in capital costs due to completion of large capital projects, like the Gas GIS replacement project, and an increase in expenses due to digital technology and cloud-based software investments and related costs. AIC's direct case filing describes how AMS employees charge the time for their services; how AIC goes about procuring the services that it needs to operate, which necessarily fluctuate each year depending on AIC's operations and changing business needs; how AIC evaluates the services that AMS provides; and the processes that AMS and AIC employ to control the costs of AMS's services to AIC.

AIC states that further, as in past cases, AIC also provided the parties in this proceeding extensive AMS cost reporting required by the GSA, including a summary report of the functionalization of the AMS charges; the 2020 versus 2019 AMS allocation factor comparison with variance explanations; the 2019 versus 2018 AMS allocation factor comparison with variance explanations; the 2020 AMS allocation factor calculation file; the 2019 AMS allocation factor calculation file; the 2018 AMS allocation factor calculation file; the 2019 AMS billing report with the total AMS costs allocated to AIC and other Ameren affiliates summarized by the AMS functional area; a detailed report that supports the 2019 billing report summary; a detailed report that supports the 2018 billing report summary; and a detailed report for the 2021 forecast of AMS costs in this proceeding. AIC notes that the detailed reports of all monthly AMS charges were also provided in the native Excel format, each with approximately 16,000 rows of AMS cost data, which can be pivoted and sorted by AIC and the other affiliates receiving the charges, description of each service provided by project/service request name and number, allocation factor used, allocation factor name, service request type (i.e., direct, indirect allocated, etc.), FERC Major/Minor account, utility, and labor/non-labor amounts.

AIC notes that with all that data in hand, no party identified a particular AMS service that it testified AIC does not require or that was imprudent. And no party identified a particular AMS cost that it testified was inconsistent with the GSA or unreasonable in amount.

AIC states that, nevertheless, IIEC/CUB/FEA witness Gorman proposed to disallow a portion of AIC's forecasted test year AMS costs. AIC explains that Mr. Gorman's adjustment is premised on his opinion that any and all AMS costs allocated among the Ameren affiliates using the Commission-approved Labor allocation factor in the GSA should be instead allocated using the Corporate Composite allocation factor, and on his belief AMS charges in Account 920 are overstated.

AIC maintains that Staff agrees with the Company that both of IIEC/CUB/FEA witness Gorman's adjustments are inconsistent with the GSA, and both are arbitrary.

AIC notes that, the AG states it supports IIEC/CUB/FEA's adjustments. IIEC/CUB/FEA Ex. 1.0 at 28; AG Ex. 4.0 at 34. AIC points out that the AG offers no independent argument or evidence in support of IIEC/CUB/FEA's AMS cost related adjustments. The AG raised only general concern[s]" regarding allocation factors other than the Labor allocation factor. In fact, AIC points out, AG witness Selvaggio's testimony does not mention the Labor allocation factor or Account 920 at all.

AIC explains that the AG's support for IIEC/CUB/FEA witness Gorman's adjustments is legally improper. See *Citizens Util. Bd. v. Ill. Commerce Comm'n*, 2018 IL

App (1st) 170527, ¶ 30. AIC argues that a party must assert its own legal interests and rights, not those of third parties. *Powell v. Dean Foods Co.*, 2012 IL 111714, ¶ 36. The intervenors have not developed a cohesive argument explaining why they should be permitted to rely on another party's evidence. See *Enbridge Pipeline (Ill.), LLC v. Monarch Farms, LLC*, 2017 IL App (4th) 150807, ¶¶ 79-80 (finding that failure to develop a cohesive argument results in forfeiture).

Regarding IIEC/CUB/FEA witness Gorman's Labor allocator-related adjustment to AMS costs, AIC explains that the Commission-approved Labor allocation factors in the GSA are based on the Labor for the most recent calendar year. Labor includes salaries and other compensation but does not include benefits. The numerator of which is for a Client Company, such as AIC, or an affected affiliate and the denominator of which is for all Client Companies and affected affiliate companies.

AIC notes that the Labor allocation factors were not included in the pre-2017 amended GSA. Rather, they were added during the Docket No. 16-0287 workshop process to address a stakeholder concern that the existing Number of Employees allocation factors could result in an under-allocation of shared AMS costs to affiliates that do not have employees. AIC explains that since AMS employees track their time spent directly working for each Ameren affiliate, the Labor allocation factors were created to allocate AMS employee costs based on the particular work being performed for each affiliate. The Labor allocation factors are directly related to employees and the tools they need to perform their jobs.

AIC states that, per the GSA, allocation factor assignments must reflect the cost-causation nature of the costs. See Docket No. 16-0287, GSA, App. B. That is, the allocation factor applied to a particular AMS services' cost should best allocate the costs of that service to the affiliates that are driving the cost and benefiting from the service. AIC explains that AMS and AIC collaborate towards that end when they determine the allocation factor to assign to an AMS service. Because the Labor allocation factors distribute AMS costs based on the affiliates that are receiving the benefit of the work being done by the AMS employees, AIC maintains that it would be consistent with the GSA's cost causation requirement for AMS to use a Labor allocator to allocate, for example, the costs of a new computer-based training on employee safety, since employees receive the benefit of the training. AIC asserts that to use an allocation factor that is *not* based on the affiliates that are using or benefiting from the AMS employees' labor would result in an unfair cost allocation among the Ameren affiliates.

AIC notes that despite this, IIEC/CUB/FEA witness Gorman believes that the forecasted allocated cost of all AMS services allocated to AIC using the Labor allocation factors is not appropriate because it does not allocate enough costs to Ameren Corporation or its transmission-only affiliates. IIEC/CUB/FEA witness Gorman opines, therefore, that use of the Labor allocation factor results in AIC subsidizing AMS costs to Ameren Corporation and the transmission-only affiliates.

AIC states that Mr. Gorman proposes that the Commission discontinue the use of the Labor allocation factor altogether, and instead implement a new Corporate Composite allocation factor to allocate test year AMS costs that would be allocated using the Labor allocation factors. AIC explains that the Corporate Composite allocation factor is

calculated based on an equal 1/3 weighting of the total Revenues, Assets, and Labor allocation factors of AIC and the other Ameren affiliates that share AMS's services. AIC notes that it is typically used for corporate-related AMS costs, such as performance management, general communications, strategic planning, and corporate memberships. AIC concludes that the result of supplanting the Labor allocation factor with the Corporate Composite allocation factor in the test year, as IIEC/CUB/FEA witness Gorman proposes, is a nearly \$7 million downward adjustment to AIC's total forecasted 2021 AMS costs.

AIC explains that the Commission should reject the adjustment, for three reasons. First, AIC contends, the adjustment is contrary to law. Under Illinois law, utility rates must permit a public utility to recover its prudent and reasonable costs of service. *Citizens Util. Bd. v. Ill. Commerce Comm'n*, 166 Ill. 2d at 126; 220 ILCS 5/9-101 (just and reasonable costs of service are recoverable). AIC notes that Mr. Gorman, however, did not identify any particular AMS service that he contends should not have been allocated using the Labor allocation factor. Thus, AIC argues, IIEC/CUB/FEA witness Gorman's adjustment would disallow the costs of AMS services that he does not dispute are prudent and reasonable.

Second, AIC contends, IIEC/CUB/FEA witness Gorman's adjustment is arbitrary. AIC explains that under Illinois law, the Commission may not disregard the level of an operating expense shown by the evidence to be prudent and reasonable in favor of an arbitrarily lower amount. *The Peoples Gas Light and Coke Co. v. Slattery*, 373 Ill. 31, 61-62 (1939); *Bus. & Prof'l People for Pub. Interest*, 136 Ill. 2d at 230-34. Yet, AIC maintains, IIEC/CUB/FEA witness Gorman asks the Commission to wholly supplant the Labor allocation factor with the Corporate Composite one, even though IIEC/CUB/FEA witness Gorman has not demonstrated (and cannot demonstrate) that no AMS cost should be allocated using the Labor allocation factor. AIC explains that Mr. Gorman would have AMS, AIC, and the other Ameren affiliates not use the Labor allocator in the 2021 test year at all. AIC argues that arbitrarily disregards the service-by-service assessment that occurs between AMS and AIC buyers when they determine the allocation factors that most appropriately allocate AMS services costs based on the affiliates that benefit from the services and drive the costs, as required by the GSA.

Third, IIEC/CUB/FEA witness Gorman's adjustment is inconsistent with the Commission-approved GSA. AIC points out that IIEC/CUB/FEA witness Gorman did not explain how use of the Corporate Composite allocation factor would align with the GSA's requirement that allocation factors reflect cost causation principles. IIEC/CUB/FEA's reallocation of AMS costs allocated using the Labor allocation factors would result in 2/3 of the costs being arbitrarily allocated based on factors that are neither directly nor indirectly related to their cost causation or the affiliates receiving the benefits. Thus, IIEC/CUB/FEA witness Gorman's adjustment would conflict with the Commission-approved GSA.

AIC notes that IIEC/CUB/FEA continue to urge the Commission to use the Corporate Composite allocator instead of the Labor allocator. AIC explains that IIEC/CUB/FEA's arguments in support of that proposal, however, reflect a fundamental misunderstanding of the GSA, misassumptions regarding the relative levels of services used by AIC and the Ameren affiliates that are inconsistent with the record evidence, and

unsubstantiated and improper allegations of bad faith against AIC, AMS, and Ameren Corporation.

AIC notes that IIEC/CUB/FEA argue that the GSA supports their proposal to wholly supplant use of the Labor allocator with the Corporate Composite allocator because the agreement requires that the allocation factors, or percentages, used to allocate AMS costs be updated annually to reflect changes in the numbers underlying the factors or “more frequently if there is a change in the affiliates that receive services under the Agreement or, in its discretion; there has been a change in circumstances that warrants an update.” See Docket No. 16-0287, GSA, App. C at ¶6.

Here, AIC explains, IIEC/CUB/FEA misunderstand the GSA. AIC reiterates that, per the GSA, AMS costs that are applicable to two or more Ameren affiliates are directly allocated between or among those affiliates based on factors described in the GSA, such as the affiliates’ most recent calendar year-end number of customers. Thus, per the GSA, the factors, or percentages, are recalculated annually to reflect changes in the numbers underlying the factors. AIC explains that generally, new factors are effective every January 1. AIC maintains that this process ensures that the allocation factors remain current and accurate, and thus that they continue to reflect the cost causation nature of AMS costs, as required by the GSA. AIC notes that in March 2019, consistent with the GSA’s annual reporting requirements, AIC filed with the Commission the updated allocation percentages for 2019, including an explanation of all material variances in the percentages to AIC relative to the 2018 allocation factors.

AIC notes that IIEC/CUB/FEA appear to think that the passage of time is a change in circumstances that warrants an update to the Labor allocator under the GSA. AIC explains that while nothing precludes the Commission from approving in a rate case any lawful ratemaking adjustment, including an adjustment to an allocation factor, there is no temporal trigger in the GSA that supports wholly supplanting a Commission-approved allocation factor after some passage of time. Indeed, AIC maintains, it would be inconsistent with the GSA to do so given that the GSA requires the allocation factor applied to each AMS service to at all times reflect the cost-causation nature of the service. See Docket No. 16-0287, GSA, App. B (“Allocated Direct allocation factor assignment will reflect the cost-causation nature of the costs.”).

AIC contends that the Commission approved the amended GSA, including its new reporting requirements, just three years ago, in April 2017. So, “the passage of time” that IIEC/CUB/FEA refers to is a mere two years—from the April 2017 effective date of the amended GSA to March 2019, when AIC submitted the updated 2019 allocation factors that Mr. Gorman now disputes. Moreover, AIC reiterates, the Labor allocation factor was added to the GSA in Docket No. 16-0287 to better reflect the cost-causation nature of certain AMS costs at the behest of stakeholders, like IIEC, CUB, and their witness IIEC/CUB/FEA witness Gorman, who were concerned that the existing Number of Employees allocation factors could result in an under-allocation of shared AMS costs to affiliates that do not have employees. AIC maintains that the Commission should therefore decline IIEC/CUB/FEA’s vague invitation to revisit the GSA now to presumably add the cost of yet another GSA proceeding to AIC’s customers.

AIC next asserts that the record evidence belies IIEC/CUB/FEA's assumptions regarding the AMS services used by the Ameren affiliates. AIC notes that IIEC/CUB/FEA argue that the growth in Ameren Corporation's non-utility transmission companies, who utilize significant AMS and other affiliate services reflects a change in circumstances that warrants wholly supplanting the Labor allocator. AIC notes that IIEC/CUB/FEA argue that originally, AMS Client Companies consisted of the regulated utility operations in Missouri (Ameren Missouri) and Illinois (Ameren Illinois), however the creation of transmission companies that do not serve any AIC retail customers, now utilize significant AMS services. AIC states that this is incorrect.

First, AIC explains, Ameren Transmission Company of Illinois ("ATXI") is a party to the amended GSA and is expressly defined as a "Client Company" subject to its terms. See Docket No. 16-0287, GSA at 1. Further, that AMS might provide services to Other Client Companies, including Ameren Transmission East and Ameren Transmission Southwest, is also expressly contemplated by the GSA. *Id.*, App. D (identifying "Client Companies" and "Other Client Companies").

Second, AIC explains, there is no evidentiary support for IIEC/CUB/FEA's assumption that ATXI and other transmission-only affiliates utilize significant AMS services, at least relative to AIC. AIC maintains that the evidence reflects the opposite. As the evidence demonstrates, and as the Commission has previously found, there are differences in AIC's and ATXI's businesses and, as such, in the level of products and services needed to support each differ. See, e.g., *Ameren Ill. Co.*, Docket No. 16-0262, Order at 17-18 (Dec. 6, 2016).

Ultimately, AIC explains, since the GSA requires cost causation, it is the nature of the specific AMS service that must drive the appropriate factor to allocate that service's cost among the Ameren affiliates—not unsubstantiated assumptions about the relative levels of the AMS services that AIC and the other Ameren affiliates use. AIC notes that notably, although IIEC/CUB/FEA take the generic position that AIC is improperly allocated AMS costs using the Labor allocator, IIEC/CUB/FEA and their witness did not identify any particular AMS service that they contend AIC does not need or any particular AMS cost that they contend should not be allocated to AIC (or the other Ameren affiliates) using the Labor allocator.

AIC next assert that IIEC/CUB/FEA's adjustment is otherwise premised on unsubstantiated allegations of bad faith. AIC explains that inflammatory statements and unsubstantiated accusations have no place in Commission proceedings. 83 Ill. Adm. Code 200.190(a) (the Commission may strike scurrilous material from the record); 83 Ill. Adm. Code 200.610(a); 83 Ill. Adm. Code 200.680. Accordingly, the Commission disregards such material. See, e.g., *Chamberlain v. Commonwealth Edison Co.*, Docket No. 03-0463, Tr. 8 (Sept. 17, 2003) (the ALJ *sua sponte* striking all references to a "matter . . . discussed in a scurrilous manner.").

AIC notes that, nevertheless, IIEC/CUB/FEA repeatedly allege that there is a lack of oversight that incentivizes AMS and Ameren Corporation to over allocate AMS costs to AIC as a regulated entity. AIC contends that the Commission should disregard IIEC/CUB/FEA's accusation for three reasons.

First, AIC notes, IIEC/CUB/FEA offer no facts that substantiate their allegation of improper motive. AIC maintains that the allegation can serve no legitimate purpose other than to inflame the Commission and AIC's customers against AIC.

Second, AIC points out that ATXI is regulated by the Commission and FERC directly undercuts IIEC/CUB/FEA's charge. Since both AIC's and ATXI's costs are recovered through Commission- and FERC-regulated rates, any costs allegedly allocated from AIC to ATXI should still be recovered if the costs are prudent and reasonable. There is no incentive to incur imprudent or unreasonable costs.

Third, AIC maintains that AMS employees are not on a fixed accounting distribution; they are required to enter their time for each hour worked in the pay period. So, there can be no over allocation of the cost of their services, as IIEC/CUB/FEA accuse. Further, AIC explains, AMS employees are required to complete annual training to ensure that they properly charge and track their time to each Ameren affiliate. Their timesheets are also reviewed and approved by AMS supervisors. And AMS Internal Audit reviews the time sheet review process and the timeliness of time sheet approval. AIC explains that in addition to these measures, which ensure that AMS costs are properly allocated to and among the Ameren affiliates, AIC reviews the monthly cost reports to ensure that the AMS charges to it are reasonable.

AIC notes that IIEC/CUB/FEA argue that it is extremely important to properly allocate AMS costs to the transmission owning affiliates, because under-allocating costs to these affiliates puts AIC retail customers in the untenable and avoidable situation of subsidizing Ameren Corporation's non-utility transmission only companies' costs. AIC states that it does not disagree. AIC explains the GSA expressly prohibits cross-subsidization: "Service Company shall allocate its direct, allocated direct and indirect costs to all companies it provides services to in a manner that does not cause any company receiving services from Service Company, whether under this Agreement or any other agreement Service Company may enter into in the future with Other Client Companies, to subsidize the cost of any other company receiving services from Service Company." Docket No. 16-0287, GSA at 5 (Sec. 3).

AIC notes that, as an alternative to wholly supplanting use of the Labor allocator with the Corporate Composite allocator, IIEC/CUB/FEA ask the Commission to accept Mr. Gorman's recalculation of the Labor allocation factor used to forecast test year AMS costs, which IIEC/CUB/FEA witness Gorman proposed for the first time in rebuttal testimony. IIEC/CUB/FEA witness Gorman recalculated a Labor allocator of 39.39% (the actual 2019 Labor allocator was 46.49%) based on an implied number of AMS employees (798) that he assumes provided services to AIC in 2019. AIC explains that, as Staff agrees, IIEC/CUB/FEA witness Gorman's recalculation is riddled with errors and should be rejected.

AIC points out first that while AMS headcount does not translate automatically into AMS charges to AIC, this does not mean that none of the AMS headcount increase in the test year is needed to provide services to AIC. Therefore, there is no basis to assume that the level of AMS employees providing services to AIC would not change between 2019 and 2021, as IIEC/CUB/FEA witness Gorman's recalculated Labor allocator does.

Second, IIEC/CUB/FEA witness Gorman's recalculation wholly ignores current employee levels at AMS.

AIC next notes that the AMS labor amounts that IIEC/CUB/FEA witness Gorman included in his recalculation represent both labor and non-labor AMS costs that are allocated using the Labor allocator. Non-labor costs, however, are not related to headcount. Accordingly, IIEC/CUB/FEA witness Gorman's recalculation inappropriately allocates non-labor costs by a labor-driven allocation factor.

AIC explains that, fourth, IIEC/CUB/FEA witness Gorman's recalculation does not consider that AMS labor costs related to AMS headcount are allocated by factors other than the Labor allocator.

AIC next notes that IIEC/CUB/FEA ignores that changes in AIC and Ameren Missouri payrolls also impact the calculation of the Labor allocation factor, as well as the changes in AMS labor allocated to ATXI and the other Ameren affiliates from other allocation factors. AIC explains that changes in AIC's labor dollars affect both the numerator and denominator for AIC's percentage. Changes in Ameren Missouri's and the other affiliates' labor dollars affect the denominator in AIC's percentage. The new 39.39% Labor allocator that IIEC/CUB/FEA witness Gorman recalculates thus ignores any forecasted changes to AIC and Ameren Missouri labor, resulting in these significant components in the Labor allocation percentage calculation not being updated (as required by the GSA), and improperly weighing any changes in AMS labor.

AIC points out that, the actual 2019 46.49% Labor allocator does not reflect AIC's portion of AMS labor. Rather, AIC explains, it reflects the relative amount of Ameren total labor incurred by AIC, both from its employees and from AMS or any other affiliate. Therefore, in deriving an implied 798 AMS headcount based on that allocation, IIEC/CUB/FEA witness Gorman's recalculation incorrectly assumes that the 46.49% split is applicable to AMS headcount.

Next, AIC notes, IIEC/CUB/FEA witness Gorman's recalculation takes the derived 2019 AMS headcount of 798 and divides it by the forecasted 2021 AMS headcount of 2,026 to create a new allocation factor based on an implied headcount and mismatched periods, an approach that has not been approved by the Commission under the GSA.

Eighth, AIC maintains, IIEC/CUB/FEA witness Gorman's recalculation ignores actual historical allocations and would produce a 39.39% Labor allocation to AIC in 2019 when 46.69% of AMS Labor was actually allocated to AIC that year. IIEC/CUB/FEA witness Gorman offered no support for that decreased level of labor in 2019.

Finally, IIEC/CUB/FEA witness Gorman's recalculation uses the number of AMS employees to recalculate his Labor allocation percentage for 2021, and not the amount of affiliate labor costs used in the derivation of the labor allocators as required GSA. Yet, AIC notes, IIEC/CUB/FEA witness Gorman never explained how such an "implied" number of AMS employees in a given year is an appropriate metric for allocating AMS costs to AIC and among the Ameren affiliates.

AIC concludes that there is simply no basis, in the evidence or the GSA, for IIEC/CUB/FEA's proposal to wholly supplant or, in the alternative, recalculate the 2019 Labor allocator used to forecast AIC's test year AMS costs.

ii. Staff's Position

Staff argues that the Commission should not adopt the IIEC/CUB/FEA proposal to use a Corporate Composite factor in lieu of the Labor allocation factor to allocate AMS costs to AIC. IIEC/CUB/FEA Ex. 1.0 Conf. at 5, 22. The evidence in this case does not demonstrate the proposed Corporate Composite allocator would better reflect cost causation than does the Labor allocator used by Ameren.

Staff witness Pearce explained that Mr. Gorman's proposal is not in accordance with the provisions of the GSA approved by the Commission in Docket No. 16-0287, and she agreed with AIC witness Perniciaro that Labor allocators were added to the GSA to more accurately reflect cost causation principles. Staff Ex. 9.0 at 36-37. Therefore, Staff witness Pearce did not agree that the Corporate Composite allocation factor provided a more accurate reflection of cost causation.

iii. IIEC/CUB/FEA's Position

IIEC/CUB/FEA argue AMS costs are too expensive relative to the level of services the affiliate provides to its Client Companies generally, and AIC specifically. IIEC/CUB/FEA Ex. 1.0 at 4. In addition to an independent third-party audit, which the Commission has been reluctant to support, there are further options the Commission could consider that will improve cost allocation. IIEC/CUB/FEA propose a fairer and more accurate alternative means to improve cost allocation under the GSA that will benefit AIC customers.

IIEC/CUB/FEA note the GSA, by its terms, permits a change in the allocation factors if a change in circumstances so warrant:

The components of the allocation methodology set forth in Section 3 and Appendix B of the Agreement shall be updated at least annually. Service Company shall update these components more frequently if there is a change in the affiliates that receive services under the Agreement or, in its discretion; there has been a change in circumstances that warrants an update.

IIEC/CUB/FEA Ex. 1.0 at 9-10, *quoting* GSA, App. C at 24 (emphasis added).

Given the passage of time since the last amendment and the record in this case, IIEC/CUB/FEA believe now is the time to consider a change. IIEC/CUB/FEA presented two proposals to the Commission for consideration. First, and most appropriately, IIEC/CUB/FEA recommend the use of a better-suited cost-based Corporate Composite allocator as a replacement for the Labor allocator. IIEC/CUB/FEA maintain the Composite Allocator will better reflect the AMS costs and better direct those costs to the appropriate customer affiliates. Second, and in the alternative, IIEC/CUB/FEA stress the Commission should recalculate the 2019 Labor allocation factor that AIC used to forecast its 2021 AMS costs in this proceeding.

IIEC/CUB/FEA declare the Labor allocator currently in use is inappropriate, is not independent of Ameren Corporation's control, and fails to reflect a change in circumstances of AMS Client Companies. IIEC/CUB/FEA Ex. 1.0 at 9. IIEC/CUB/FEA assert the change in circumstances referred to is the growth in Ameren Corporation's

non-utility transmission companies, who utilize significant AMS and other affiliate services. IIEC/CUB/FEA espouse the change of circumstances, coupled with the lack of independence related to Ameren Corporation assigning the labor cost that produces the Labor Allocator, rather than simply tracking the AMS efforts to provide services to AIC, suggest it is time for the Commission to reconsider the allocator. IIEC/CUB/FEA Ex. 1.0 at 5.

Originally, AMS Client Companies consisted of the regulated utility operations in Missouri (Ameren Missouri) and Illinois (Ameren Illinois), however ATXI does not serve any AIC retail customers but utilizes significant AMS services. IIEC/CUB/FEA stress that these transmission companies do not serve AIC retail customers, but rather make transmission investments based on regional planning done by MISO. This regional planning benefits the MISO region as opposed to specific transmission investments needed for reliable operations of assets used by AIC to provide service to its customers. IIEC/CUB/FEA Ex. 1.0 at 11. Therefore, IIEC/CUB/FEA argue it is extremely important to properly allocate AMS costs to these transmission-owning affiliates. IIEC/CUB/CUB emphasize that under-allocating costs to these affiliates puts AIC retail customers in the untenable and avoidable situation of subsidizing Ameren Corporation's non-utility transmission only companies' costs. *Id.* at 12.

IIEC/CUB/FEA maintain transmission affiliates such as ATXI are shell financing companies, which do not require utility staffing to operate their transmission infrastructure. IIEC/CUB/FEA Ex. 1.0 at 13. ATXI owns only transmission infrastructure and has no employees. *Id.* at 13. Therefore, IIEC/CUB/FEA aver it logically follows these shell transmission companies must utilize services from AMS, AIC or Ameren Missouri to function.

IIEC/CUB/FEA note that because ATXI does not have any direct employees, its management, engineering staff, accounting and controller functions are provided entirely by AMS. All the significant, diverse, and comprehensive efforts expended to operate ATXI are not typical functions provided to AIC or Ameren Missouri. Thus, IIEC/CUB/FEA raise the concern whether the GSA allocation factors, or the direct assignment of AMS costs to ATXI, reasonably reflect all the services and operating requirements of ATXI, or whether those affiliate costs are being unfairly assigned, consistent with the GSA but imbalanced due to the control of Ameren Corporation.

IIEC/CUB/FEA note the present allocation protocol is unfair. IIEC/CUB/FEA conclude the AMS costs allocated to ATXI are unreasonable when compared to AIC's cost of FERC transmission service. IIEC/CUB/FEA Ex. 1.0 at 16.

IIEC/CUB/FEA emphasize Ex. 1, Table 3 illustrates that the amount of O&M expense included in the AIC transmission FERC revenue requirement is nearly double the percentage of ATXI total revenue requirement, and this has not changed since 2017. IIEC/CUB/FEA Ex. 1.0 at 16. IIEC/CUB/FEA stress there is an obvious disparity in the operating costs AIC includes in its FERC transmission rate and O&M expense included in ATXI's transmission rate. The disparity raises the possibility of bias in how the GSA assigns AMS costs across affiliates. Of particular concern is the fact that the labor allocation factor is subject to the discretion of AMS or Ameren Corporation management,

coupled with no regulatory oversight to verify the AMS costs are being properly assigned to ATXI and other non-utility transmission affiliates.

IIEC/CUB/FEA maintain it is not clear how the Labor allocator can be used to independently determine how costs are allocated between affiliate companies, when some of the affiliate companies do not have any employees. IIEC/CUB/FEA advance that the lack of clarity is another reason that the Commission should revisit the GSA and to verify whether AMS costs that are largely or completely dedicated to the non-utility transmission companies are being directly assigned to those companies and not being subsidized by other Client Companies, specifically AIC.

IIEC/CUB/FEA assert ATXI's attributes call into question how a Labor allocator can be used to independently determine how costs are allocated between affiliate companies, when some of those affiliate companies have no employees. IIEC/CUB/FEA question how the Commission can have confidence that the development of the labor allocation factors is truly independent, representing the amount of labor necessary to operate each of the Client Companies, when it is based not on verifiable Client Company factors, but rather on allocations and apportionments made by Ameren Corporation or AMS. IIEC/CUB/FEA Ex. 1.0 at 19.

IIEC/CUB/FEA note the misallocation of labor costs can be significant. To support his argument, AIC witness Perniciaro first argues the semantics of the use of the word "significant," stating, IIEC/CUB/FEA witness Gorman does not specify the context of what is meant by significant services.

To put "significance" in context, Ameren Missouri has 4,072 employees, AIC has 3,746 employees, and Ameren Services has 1,775 employees. IIEC/CUB/FEA Ex. 1.0 at 19. When arguing the necessity of third-party services needed by a large company with 3,746 employees, compared to a large company with no employees, the services needed by the company with no employees should be classified as significant.

AIC witness Perniciaro continues to downplay this significance by directly comparing the size and scope of AIC to ATXI, noting services needed by AIC and not needed by ATXI. AIC witness Perniciaro's claim ignores the fact that AIC has 3,746 employees. Ameren Ex. 24.0 at 17. IIEC/CUB/FEA note, AIC has 3,746 employees that do a myriad of jobs to support AIC, while ATXI, although correctly not needing the identical services as AIC, has no employees and cannot function without AMS services. IIEC/CUB/FEA suggest, AIC can distinguish size and logistical differences, but the fact remains AIC has 3,746 employees and ATXI has none.

AIC witness Perniciaro's attempt to distinguish AIC and ATXI illustrates why an allocation factor that is not controlled by Ameren Corporation would be more appropriate than the Labor allocator. AIC witness Perniciaro recognizes that it is more than just employee billable time that describes AMS service obligations provided to AIC and the other Client Companies. A composite allocation factor gives more consideration to more functional services of AMS that cause it to incur cost to provide services to AIC and other client Companies.

IIEC/CUB/FEA note, the Labor allocator is derived based on AMS employees' assignment of their time for performing functions for affiliate companies. However,

IIEC/CUB/FEA stress the Commission cannot confirm that AMS' employee numbers are reasonable, correct, and billed properly across affiliates. IIEC/CUB/FEA believe the lack of oversight can create a motive or incentive for Ameren Corporation to over allocate costs to certain affiliates as opposed to the correct affiliates.

IIEC/CUB/FEA assert the use of the Labor allocator for allocation of AMS costs to certain Client Companies that do not have any employees is a poor basis for allocating these significant costs across the AMS Client Companies.

As shown on IIEC/CUB/FEA Ex. 1.6 Confidential, many of the new transmission affiliates are not receiving any allocation of costs allocated on labor. Costs allocated to ATXI are a relatively small amount. Despite AIC witness Perniciaro's assertion that the costs are related to the cost of employees, neither Ameren Corporation nor AMS, have shown how they develop labor costs for the Client Companies that have no employees. Ameren Ex. 24.0 at 14; IIEC/CUB/FEA Ex. 1.0 at 22.

IIEC/CUB/FEA note that the Company, through the GSA, has offered a Corporate Composite allocation factor which gives some weight to the Labor factor but also includes revenues and assets. IIEC/CUB/FEA Ex. 1.0 at 22. The Corporate Composite allocator is typically used for corporate costs or when a more appropriate allocation factor is not available. Ameren Ex. 24.0 at 19. The Composite allocator is based on an equal (1/3) weighting of the Revenues (total), Assets (total), and Labor (total) allocation factors. *Id.* at 19.

IIEC/CUB/FEA advance the Corporate Composite allocator is more balanced and reasonable for several reasons. First, it cannot be directly influenced by Ameren Corporation or AMS assignment of labor costs. Second, it includes various factors, including a labor component, which are reasonably consistent with the cost-causation nature of technology, human resources, treasury and accounting, and finance and legal services. Third, the composite factor reflects costs needed to manage the "assets" of the Client Company. IIEC/CUB/FEA Ex. 1.0 at 22-23.

AIC witness Perniciaro disagrees with IIEC/CUB/FEA's assertion that Labor allocator costs can be directly influenced by Ameren Corporation or AMS. The AIC witness testified ATXI is regulated by both the Commission and FERC and during the ratemaking process, unreasonable or imprudent costs are not recoverable. Ameren Ex. 24.0 at 18. AIC also cites the fact that AMS performs internal audits and reviews and AIC reviews the monthly reporting each month to ensure charges are reasonable. *Id.* at 23.

As to the question of influence, IIEC/CUB/FEA argue the only two parties that oversee the allocation of AMS labor costs are Ameren Corporation and AMS. Without a proper independent third-party audit as proposed by IIEC/CUB/FEA, the true nature of the costs, whether prudent or reasonable, cannot be truly confirmed.

Further, AIC deems IIEC/CUB/FEA's proposal to be contradictory because the Corporate Composite allocator does have a labor component. Ameren Ex. 24.0 at 22. IIEC/CUB/FEA never argued differently but confirm it is not contradictory to propose a more appropriate allocation factor that includes labor as one of the considerations instead of the sole consideration.

AIC disputes IIEC/CUB/FEA's position that the Composite factor reflects cost needed to manage the assets of the Client Company. AIC witness Perniciaro admits he does not have direct knowledge of ATXI's assets, but he alleges ATXI's transmission investments are recent, and newer assets would not require the same level of maintenance that may be needed for an older transmission system such as AIC's. Ameren Ex. 24.0 at 22.

IIEC/CUB/FEA assert that on its surface, AIC's claim lacks substance. IIEC/CUB/FEA note all assets require some amount of maintenance and disagreement over the amount is irrelevant. Nonetheless, this can all be confirmed or corrected with an independent third-party audit. Absent such audit, IIEC/CUB/FEA maintain the utilization of the Corporate Composite allocator is more balanced and reasonable than utilization of the Labor allocator.

IIEC/CUB/FEA argue the Commission should recalculate the 2019 Labor allocation factor that AIC used to forecast its 2021 AMS costs in this proceeding. AIC's proposal to hold the 2019 Labor allocation factor constant and apply to AMS costs in the 2021 forecasted test year is unreasonable.

IIEC/CUB/FEA note that the Company's evidence shows there are substantial changes in AMS labor costs in 2021 compared to the data used to develop the 2019 labor allocation factor. IIEC/CUB/FEA also note, the evidence suggests that the increase in AMS employees and labor expense is needed for Client Companies other than AIC. Consequently, IIEC/CUB/FEA assert holding the Labor allocation constant with the time allocated in 2019 allocates less AMS cost to AIC than recommended by AIC in this case and results in a more reasonable allocation of AMS cost to AIC in the 2021 test year.

IIEC/CUB/FEA maintain it is important to note that the 2019 labor allocation factor does not consider or reflect the significant increase in 2021 budgeted AMS total labor cost and the increase in the number of AMS employees budgeted for 2021. IIEC/CUB/FEA argue AIC has not provided evidence that these increases in AMS labor costs or employees are needed to provide service to AIC in 2021 as argued elsewhere. Consequently, holding the 2019 labor allocation factor constant from 2019 to 2021 is not reasonable, nor reflective of budgeted changes at AMS in the future test year.

IIEC/CUB/FEA argue, holding the 2019 labor allocation factor constant through 2021 as proposed by AIC, however, means the budgeted increase in AMS employees and related labor cost will be over-allocated to AIC in 2021. The number of AMS employees allocated to AIC would increase to around 942 employees (46.49% of the budgeted 2,026 FTE) in 2021 due to the increase in AMS budgeted employees in 2021, if the 2019 labor allocation factor is held constant. IIEC/CUB/FEA Ex. 3.0 at 15. This compares to 798 of AMS employees allocated to AIC in the development of the 2019 Labor allocator. IIEC/CUB/FEA note that holding the 2019 Labor allocator constant has a significant impact on AMS costs allocated to AIC.

In addition, IIEC/CUB/FEA note, the actual AMS hours recorded in 2019 indicated that about 798 AMS employees were sufficient to provide the services that AIC requested from AMS. For these reasons, the Company's proposal to use 2019 data in developing its Labor allocator, and then apply that to 2021 costs, has the effect of substantially over-allocating AMS costs to AIC in the 2021 forecasted test year.

IIEC/CUB/FEA asked AIC to justify the increase in AMS employees and related costs to AIC. AIC stated in part that its employees do not have personal knowledge of the records or business needs of other Ameren affiliates. AIC could not identify the affiliates which required more employees at AMS, nor could it provide any evidence that an increased number of employees at AMS was necessary to provide services to AIC. Further, AIC claims it does not have any knowledge of the details of total AMS budgeted costs in the 2021 test year, nor did it identify any increased service request it will make of AMS in 2021 versus 2019. AIC has not provided a basis to project that an increase in AMS hours or employees is needed to provide its services in 2021 versus 2019.

IIEC/CUB/FEA emphasize the 2019 Labor allocation factor can be adapted in such a way that it produces a balanced and fair Labor Allocator for AMS costs to AIC in the 2021 forecasted test year, in light of AIC's inability to provide AMS budgeted data, the lack of explanation for why AMS has increased its employees or budgeted labor costs in the 2021 test year, and other discrepancies noted above. IIEC/CUB/FEA argue it would be more appropriate to rely on the 2019 labor allocator measurement of the AMS hours or AMS employees that were needed to provide AIC services in 2019.

IIEC/CUB/FEA note, using the level of 2019 AMS employees that are needed to provide service to AIC per the 2019 GSA audit (798) as a percentage of the budgeted 2021 AMS employees of 2,026, would imply a labor allocation factor for AIC in year 2021 of 39.39% ($798 \div 2,026$). IIEC/CUB/FEA Ex. 3.0 at 16.

iv. Commission Analysis and Conclusion

IIEC/CUB/FEA propose replacing the Labor allocation factor with a Corporate Composite allocation factor when determining AMS costs that should be allocated to AIC versus other Ameren Corporation companies. As the parties note, the allocation factors related to AMS were approved in Docket No. 16-0287. This docket included participation from Staff and several intervenors. IIEC/CUB/FEA witness Gorman's proposal to use a Corporate Composite allocation is in contravention with the approved GSA. The Commission agrees that the GSA states that Labor allocators were added to accurately reflect cost causation principles. The Commission also agrees with AIC that no party identified a particular AMS service that AIC does not require or that was imprudent. Further, no party identified a particular AMS cost that it testified was inconsistent with the GSA or unreasonable in amount.

The Commission notes that IIEC/CUB/FEA make two proposals for adjustments to AIC's test year AMS charges. The first proposal is to supplement the 2019 Labor allocator to forecast test year AMS costs. The second proposal is that the 2019 Labor allocation factor be recalculated based on implied levels of AMS employees providing services to AIC in 2019 and 2021. However, the Commission is also not convinced that the IIEC/CUB/FEA recalculation of the 2019 Labor allocation factor is a more accurate indicator of AMS costs because it does not take into account various allocation factors.

For these reasons, the Commission rejects IIEC/CUB/FEA's proposed adjustments.

b) Account 920 Allocation

i. AIC's Position

AIC explains that it charges to the Administrative & General Salaries Expense account (Account 920) costs for the services that it needs to operate, including AMS services. In addition to salaries, the account includes AMS employees' pension and benefits costs. AIC forecasts that its Account 920 costs will increase approximately 5% each year, 2018 to 2021. That forecast is based on the time that AMS employees expect to spend providing AIC the services it needs to operate and the AMS cost support that AIC provided in the proceeding.

AIC notes that IIEC/CUB/FEA witness Gorman contends that AIC's forecasted 2021 Account 920 costs in this proceeding are overstated because AMS's budgeted employee headcount is overstated. To adjust for this, IIEC/CUB/FEA witness Gorman proposes that the test year increase in Account 920 expenses allocated to AIC's gas operations be capped at the consensus economists' forecasted 2.0% inflation rate. AIC notes that IIEC/CUB/FEA witness Gorman opined that it is appropriate to use independent variable economists' projections of future escalators . . . because independent economists have no interest in the outcome of this rate case. IIEC/CUB/FEA witness Gorman's adjustment would reduce AIC's 2021 forecasted revenue requirement by approximately \$1 million.

AIG explains that the Commission should reject IIEC/CUB/FEA witness Gorman's adjustment for three reasons: (1) IIEC/CUB/FEA's proposal is contrary to the record evidence; (2) it is inconsistent with the Commission-approved GSA; and (3) it would unlawfully and arbitrarily disallow the prudent and reasonable costs of AMS services that IIEC/CUB/FEA witness Gorman does not dispute that AIC requires to operate its business and serve customers, as Staff agrees.

First, AIC believes that the adjustment reflects Mr. Gorman's misunderstanding as to how AMS charges costs to AIC per the GSA. AIC explains that AIC's gas rates are set to compensate AMS for only AIC's use of AMS's budgeted level of employees. Specifically, AMS employees forecast the time they expect to spend providing a service into budget systems. AIC explains that these systems allow the employees when entering their time, to select a specific service request project to charge their time. Each service request project, in turn, is assigned an allocation factor, which AMS uses to allocate the labor charges for the project to the Ameren affiliate or affiliates that receive the services. AIC further explains that if AMS is unable to fill a budgeted position, outside services or overtime would be used to meet the demand.

AIC states that notably, the total budgeted level of AMS employees includes employees requested by other affiliates for work they require. Per the GSA, AMS charges AIC only the labor costs associated with those AMS employees that provide AIC services and only for the AMS services that AIC receives.

Second, AIC explains, in accordance with Illinois law, utility rates must permit a public utility to recover its prudent and reasonable costs of service. *Citizens Util. Bd.*, 166 Ill. 2d at 126; 220 ILCS 5/9-101 (just and reasonable costs of service are recoverable). Thus, the Commission may not disregard the level of an operating expense, shown by

the evidence to be prudent and reasonable in favor of an arbitrarily lower amount. *Slattery*, 373 Ill. at 61-62; *Bus. & Prof'l People for Pub. Interest*, 136 Ill. 2d at 230-34; *Citizens Util. Bd.*, 166 Ill. 2d at 126, 133-34.

AIC maintains that whether a cost increase aligns with inflation or is projected by independent economists who have no interest in the outcome of [the] rate case” is not the legal standard. AIC further notes that IIEC/CUB/FEA witness Gorman provided no analysis to support that 2% is a more reasonable level of increase in Account 920 than what AIC has forecasted over the three-year period 2019-2021. AIC notes that Staff witness Pearce agreed, testifying that she does not support the application of a cap that could effectively prohibit the Company from recovering otherwise prudent and reasonable costs of providing service.

AIC explains that IIEC/CUB/FEA witness Gorman's adjustment is inconsistent with the GSA. AIC notes that, as Staff witness Pearce aptly pointed out, the GSA does not contain provisions for the use of cost caps. Accordingly, the method proposed by IIEC/CUB/FEA witness Gorman would not be permitted, since it is not contained in the Company's approved GSA.

AIC notes that IIEC/CUB/FEA argue, for example, that forecasted Account 920 costs are “inflated” because they assume AIC's gas rates are set to compensate AMS for its budgeted level of employees in 2021. AIC explains that assumption is wrong. Again, AIC's gas rates are set to compensate AMS for only AIC's use of AMS's budgeted level of employees. AMS does not charge AIC for budgeted headcount vacancies; AMS charges AIC only the labor costs associated with those AMS employees that provide AIC services and, per the GSA, only for the services that AIC receives. AIC points out that Mr. Gorman never responded to or otherwise engaged with that evidence.

AIC further notes that IIEC/CUB/FEA also contend that Account 920 costs allocated to AIC's gas operations are escalating faster than the electric costs. They claim that AIC's electric and gas operations' digital technology costs would be comparable. AIC maintains that the Commission, however, must base its decision on the record evidence. And the record evidence demonstrates that the increase in AIC's gas operations income statement accounts for the 2021 test year, including AIC's Account 920 expenses, is attributable to digital technology related costs, such as costs for cloud-based services and software licenses and related AMS labor and office facilities rent costs. AIC points out that IIEC/CUB/FEA witness Gorman did not dispute that evidence or any of the reasons for the increase in the AMS costs charged to AIC's gas Account 920 from 2018 to 2021.

Moreover, AIC contends, IIEC/CUB/FEA's contention here is misguided. AIC explains that it is not appropriate to focus only on Account 920 costs in assessing variances in labor. AIC explains that business needs at the time of a project dictate whether internal or external labor, or a combination of both, will be used to complete the project. To the extent outside services are used, the related costs are recorded to Account 923. So, AIC continues, Account 923 may provide context to variances in Account 920 expenses. Notably, AIC explains, when AIC's forecasted Account 920 and 923 costs are combined, and who is doing the work for AIC is set aside, the total annualized increase is only 1.3% for gas, and it is a similar 1.5% for electric distribution.

AIC concludes that the record evidence, the law, and the Commission-approved GSA simply do not support IIEC/CUB/FEA witness Gorman's Account 920 adjustment. The Commission should reject that adjustment.

ii. Staff's Position

Staff asserts that the Commission should not adopt IIEC/CUB/FEA witness Gorman's proposal to limit the amount of Account 920 costs allocated to AIC's gas operations to the consensus economists' forecasted rate of inflation of 2.0%. IIEC/CUB/FEA Ex. 1.0 Conf. at 27. The Commission-approved GSA does not contain provisions for the use of such cost caps and such a cap could effectively prohibit the Company from recovering otherwise prudent and reasonable costs of providing service.

Staff witness Pearce notes that the Act requires that utility transactions and agreements with affiliates must be approved by the Commission (220 ILCS 5/7-101(3)) and that the Commission has permitted such affiliate transactions through approval of AIC's GSA. Staff Ex. 9.0 Conf. at 37. Staff witness Pearce explained that this GSA does not contain provisions for the use of cost caps. Accordingly, the method proposed by IIEC/CUB/FEA witness Gorman is not consistent with the Company's approved GSA. Additionally, application of a cap could effectively prohibit the Company from recovering otherwise prudent and reasonable costs of providing service.

iii. AG's Position

The AG supports the adjustments proposed by IIEC/CUB/FEA, as set forth in IIEC/CUB/FEA Ex. 1.0 at 28.

iv. IIEC/CUB/FEA's Position

IIEC/CUB/FEA witness Gorman asserts that projected Account 920 is unnecessarily inflated. IIEC/CUB/FEA witness Gorman demonstrates these costs are inflated for two specific reasons. First, IIEC/CUB/FEA witness Gorman finds the forecasted AMS labor costs (and associated salaries) for 2021 to be overstated. AMS has routinely budgeted far more employees than it actually employs, averaging 75 more budgeted employees than actual. AIC forecasts that AMS will add approximately 230 more employees between now and December 2021. IIEC/CUB/FEA Ex. 1.0 at 26. The projected increase in employees is one of the contributing factors to the higher Account 920 costs allocated to AIC's gas operations in 2021. If AIC's gas rates are set to compensate AMS for its budgeted level of employees in 2021, then AIC will most certainly over-recover AMS's actual employee costs based on its historical, normalized practice of budgeting more employees than it actually requires.

Second, Account 920 costs allocated to AIC's gas operations are escalating faster than the electric costs. IIEC/CUB/FEA Ex. 1.9. The gas Account 920 costs are forecasted to increase by 6.0% per year. *Id.* col. 9, ln 16. AIC witness Perniciaro states the increase is largely attributable to digital technology related costs, such as costs for cloud-based services and software licenses and related AMS labor and office facilities rent costs. AIC Ex. 24.0 at 28. Logic and reason would suggest digital technology related costs, such as the cloud-based services and software licenses and related AMS labor and office facilities rent costs for the gas operations, would also be comparably incurred by AIC electric

operations. Yet, the rate of inflation is not comparable which speaks to the inherent problems of AMS and the GSA.

IIEC/CUB/FEA recommend the increase in Account 920 costs allocated to AIC's gas operations be limited to the consensus economists' forecasted rate of inflation of 2.0%. IIEC/CUB/FEA Ex. 1.0 at 27 fn. 17. AIC consumers would be better served utilizing independent economists which unarguably have zero interest in the outcome of this rate case. This adjustment would reduce AIC's revenue requirement by approximately \$1 million. IIEC/CUB/FEA Ex. 1.9.

v. Commission Analysis and Conclusion

The Commission declines to adopt IIEC/CUB/FEA's adjustment to Account 920. As Staff states, the GSA does not allow for cost caps on certain expenses, and such caps may prevent the Company from recovering its prudent and reasonable costs of service. In addition to running counter to AIC's GSA, IIEC/CUB/FEA's adjustment is not consistent with the record evidence, in which AIC has demonstrated that the increase in AIC's gas operations income statement accounts for the 2021 test year is attributable to digital technology related costs, such as costs for cloud-based services and software licenses and related AMS labor and office facilities rent costs. AIC points out, and the Commission agrees, that IIEC/CUB/FEA witness Gorman did not dispute that evidence or any of the reasons for the increase in the AMS costs charged to AIC's gas Account 920 from 2018 to 2021.

12. Interest on Customer Deposits

a) AIC's Position

AIC explains that in December of each year, the Commission is required to calculate the rate of interest to be paid by gas, electric, water, and sewer utilities and by telecommunications carriers on deposits held based on the average one-year yield on United States Treasury securities for the last full week in November. 83 Ill. Adm. Code 280.40(g); 735.120(h). AIC states that pursuant to the Code, the Commission set an interest rate of 1.5% for customer deposits held during 2020 based on the average one-year yield on United States Treasury securities for the last full week in November 2019. See *Ill. Commerce Comm'n*, Docket No. 19-1122, Order at 1 (Dec. 19, 2019).

AIC states that its rate base includes a deduction for interest on customer deposits calculated at the approved rate for 2020 of 1.5% per annum. AIC notes that no party disputes that AIC's calculations appropriately include the cost of interest on customer deposits; in fact, the AG confirms that "[t]he Company has appropriately included a cost of interest on customer deposits at an annual rate of 1.5% based on the Commission's approved rate for 2020 . . .". AG Ex. 1.0 at 32. AIC notes that despite acknowledging the propriety and accuracy of applying a 1.5% interest rate, the AG suggests that the ALJs hold the record open in this proceeding to reflect the Commission's approved customer deposit rate for 2021. AIC states that both it and Staff agree that the AG's proposal to require a post-record review of a single, limited issue in this proceeding is improper single-issue ratemaking and should be rejected. According to AIC, the AG wholly disregards the fact that other cost changes, both positive and negative, may also become known after the close of the record in this proceeding.

AIC explains that the prohibition against single-issue ratemaking is well-established in Illinois. The Illinois Supreme Court has repeatedly concluded that “in a general base rate proceeding, the Commission must examine all elements of the revenue requirement formula to determine the interaction and overall impact any change will have on the utility’s revenue requirement, including its return on investment.” *Citizens Util. Bd.*, 166 Ill. 2d at 138; *People ex rel. Madigan v. Ill. Commerce Comm’n*, 2018 IL 116005, *36 (Jan. 23, 2015); *citing BPI II*, 146 Ill. 2d at 244 (“The rule against single-issue ratemaking recognizes that the revenue formula is designed to determine the revenue requirement based on the aggregate costs and demand of the utility. AIC argues that it would be improper to consider changes to components of the revenue requirement in isolation”). AIC contends that post-record review of an isolated issue, like the AG promotes here, without addressing all the components of the Company’s revenue requirement (including other costs that may become known at a later date), is impermissible and should be rejected.

AIC maintains that the Commission cannot and should not entertain the AG’s recommendation to apply the interest rate determined for 2021 customer deposits after the record has closed in this case. AIC argues that the AG’s proposal to consider a change in the customer deposit rate at the eleventh hour in this proceeding would intentionally require post-record review of a single, limited issue without considering that other cost changes, both positive and negative, may become known after the close of the record. AIC asserts that such an approach is clearly single-issue ratemaking, contrary to well-established Illinois law. AIC concludes that the AG’s proposal should be rejected.

b) Staff’s Position

Staff contends that the Commission should reject the AG’s proposal to update the customer deposit interest rate after it has been approved by the Commission in December. Staff notes that the AG proposed that, because the average one-year yield on United States Treasury securities was below 0.2% on August 12, 2020, that rate would result in a customer deposit rate of 0% for 2021. Staff contends that in rebuttal testimony, the AG proposed that the briefs on exception and/or the reply briefs on exception reflect the impact of the Commission’s approved customer deposit rate for 2021.

Staff argues that since the record has been marked “Heard and Taken,” the Company is opposed to holding the record open for the sole purpose of updating the customer deposit interest rate. Staff notes that the Company views this as single-issue ratemaking as it does not consider other costs which may also change after the close of the record in this proceeding.

Staff agrees with the Company’s position on updating the customer deposit interest rate, especially now that the record has been marked “Heard and Taken.”

c) AG’s Position

In calculating AIC’s interest expense on customer deposits, the AG recommends that the Commission use a customer deposit interest rate that most accurately represents the cost that AIC is likely to incur when its new rates take effect in January 2021. The AG argues that while Ameren utilized a 1.5% interest rate in its test year, interest rates upon which the Commission sets the customer deposit interest rate have, in fact, fallen below

1.5% since this case was filed. The Commission set the interest rate at 1.5% for 2020 in Docket No. 19-1122, but the average yield as of August 12, 2020 would result in the interest rate falling to 0%. See AG Ex. 4.0 at 33. The AG thus recommends that the Commission utilize the approved customer deposit interest rate for 2021 that will be set in December 2020, which is very likely to be 0%, and exclude AIC's allocation of \$192,430 from the Company's revenue requirement.

The AG contends every year, the Commission establishes the interest rate applicable to gas customer deposits pursuant to 83 Ill. Adm. Code 280.40, which "require[s] the Commission to calculate the interest rate each December, basing it on the average one-year yield on United States Treasury securities for the last full week in November, rounded to the nearest one-half of one percent. The rate of interest determined in that manner is to be paid on customer deposits in the following year." Docket No. 19-1122, Order at 1. The AG argues that the Commission should recognize that short term interest rates are now so low that the rate can be expected to be rounded to zero and eliminate the customer deposit expense from Ameren's cost of service.

The AG disagrees with Ameren's argument that the Commission should ignore extraordinarily low interest rates and allow the 1.5% interest expense on customer deposits in rates because other costs are not subject to change in December 2020 when the 2021 interest rate on customer deposits will be formally set by the Commission. Ameren Ex. 19.0 at 26–27. According to the AG, this would essentially invite the Commission to ignore the Company's actual cost notwithstanding that the cost can be objectively predicted and determined. The AG argues the customer deposit interest expense is independent of the Company's other costs and that updating it to reflect actual cost will not affect any other aspect of Ameren's filing nor require a more global updating of Ameren's revenue requirement. In short, the AG asserts it would be unreasonable to ignore actual data in setting this expense.

The AG also disagrees with AIC that its adjustment is single-issue ratemaking. The AG's proposal does not amount to single-issue ratemaking because it is being included in the calculation of AIC's total revenue requirement. The AG argues that the Commission should use a customer deposit interest rate that most accurately represents the cost that AIC is likely to incur when its new rates take effect in January 2021. According to the AG, AIC's approach effectively asks the Commission to shut its eyes to cost changes that are known prior to the entry of a rate order. The AG argues this is unreasonable.

The AG further explains that the purpose of the prohibition on single-issue ratemaking is to avoid situations where a cost that is likely to impact other costs within the revenue requirement is incorporated into the revenue requirement for a given year without considering its effect on other costs.

The AG points out that in *BPI II*, the Commission added costs for several previous years (deferred charges) to the revenue requirement, effectively treating a single cost differently from other costs and failing to account for cost savings in those prior years. 146 Ill. 2d at 242-248. However, in this case, the AG asserts that using the correct customer deposit interest rate does not accumulate costs from outside the test year, will be integrated into the total revenue requirement, and will not affect other costs so the

prohibition on considering a single cost in isolation does not apply. The AG argues that interest on customer deposit expense is independent of AIC's other costs and updating it to reflect actual cost will not affect any other aspect of AIC's filing nor require a more global updating of AIC's revenue requirement, and thus would not violate the prohibition on single-issue ratemaking.

The AG argues it would be unreasonable for the Commission to ignore publicly available, verifiable information that contains accurate and actual data in setting the cost for the interest on customer deposits expense.

d) Commission Analysis and Conclusion

The Commission declines to adopt the AG's proposal to hold the record open in this proceeding to reflect the Commission's approved customer deposit rate for 2021. Pursuant to 83 Ill. Adm. Code 280.40(g) and 83 Ill. Adm. Code 735.120(h), the Commission is required to calculate the rate of interest to be paid by gas, electric, water, and sewer utilities and by telecommunications carriers on deposits held based on the average one-year yield on United States Treasury securities for the last full week in November. The Commission set an interest rate of 1.5% for customer deposits held during 2020.

The Commission finds that the interest rate of 1.5% is correctly used in this docket. Based on the Commission's decision to reject the AG's proposal to hold the record open in this proceeding, the AG's Motion for Administrative Notice filed on October 5, 2020 is denied.

13. Board of Directors Stock Award

a) AIC's Position

AIC states that the Company included in the revenue requirement the allocable share of the compensation paid to the Ameren Board of Directors ("Board"), which includes both cash and stock components. Staff witness Pearce proposed an adjustment to remove the cost of compensation in the form of Ameren common stock ("Common Stock") paid to officers and directors because Staff initially believed that "the nature of these costs suggests they are not recoverable."

AIC notes that in response to Staff witness Pearce's adjustment, AIC witness Shade explained that: (1) the compensation paid to the Board was properly determined, reasonable and appropriate in amount, and consistent with industry norms; (2) the award of Common Stock as a component of Board compensation is reasonable and appropriate; (3) the Common Stock awarded to the Board is not incentive compensation based on financial performance; and (4) competitive compensation of the Board benefits both customers and shareholders by promoting the efficient, effective and safe operation of Ameren's subsidiary companies, including Ameren. AIC continues stating that in Staff's rebuttal testimony, Staff witness Pearce "accept[ed] the description of ratepayer benefits described" and then withdrew her adjustment to remove the cost of the Common Stock paid to Board members from this proceeding. Staff Ex. 9.0 at 10.

AIC notes that simultaneously with Staff withdrawing its adjustment, the AG expressed support for Staff's initial recommended adjustment. AIC explains that AG witness Selvaggio offered three bases for her support of the adjustment. AG witness

Selvaggio agreed with Staff's general proposition that stock awards incentivize decisions that favor shareholders rather than ratepayers. AG witness Selvaggio contended, without additional support, that "[Commonwealth Edison (ComEd)] does not include the cost of stock awards in its jurisdictional Board Expenses that are recovered from ratepayers." AG Ex. 4.0 at 30. And AG witness Selvaggio cited the Commission's Final Order in Docket No. 10-0467 where, she claimed, "the Commission agreed with the AG/CUB witness that it was unreasonable to expect consumers to pay for such stock awards." *Id.*

As an initial matter, AIC notes that the adjustment that AG witness Selvaggio sought to support has been withdrawn. AIC asserts that AG witness Selvaggio did not offer the adjustment in her direct testimony when all the information that was available to Staff witness Pearce was also available to her. AIC argues that absent some showing as to why AG witness Selvaggio could not have proposed the adjustment in direct testimony, the AG cannot propose new adjustments of its own at the rebuttal stage, rather, it can merely support the adjustments proposed by other parties, and, again, there is no such adjustment to support.

AIC points out that, moreover, none of the bases offered by AG witness Selvaggio is valid. AIC argues that first, as Staff has concluded, the particular stock awards at issue for this adjustment do not improperly incentivize the Board to make decisions that favor shareholders rather than ratepayers, and AIC witness Shade explained why this form of compensation is not improper or unreasonable. AIC proffers, second, regardless of whatever practice ComEd may follow, it is uncontested that Ameren Corporation incurs reasonable expenses for the compensation of its Board, which Ameren Corporation is required to have in place and which ultimately benefits AIC's customers. AIC states that those expenses properly include a reasonable level of compensation in Common Stock, which does not improperly incentivize the board to take actions adverse to customers. AIC states the expenses, including the value of the Common Stock, are properly allocated to the Ameren gas operations as an operating expense, and Ameren has recovered, and will continue to seek to recover, those reasonable and prudent costs. AIC argues finally, the Commission's Order in Docket No. 10-0467 does not support AG witness Selvaggio's position. AIC points out on page 103 of that Order, the Commission specifically addresses an AG/CUB proposal to reduce the recovery of "awards and perquisites," which appear to consist mainly of "retention awards," "special recognition performance awards" and "meter reader performance awards." Docket No. 10-0467, Order at 103. AIC states that it is also not clear—and it is unreasonable to assume—from the language in the Order that the AG/CUB adjustment referenced by AG witness Selvaggio included any portion of the fixed compensation of directors. AIC contends that as explained by AIC witness Shade, the Common Stock component of Board expenses is not an "award," as it is not contingent on financial performance or any other specific result. *Id.* AIC continues, stating, it is a standard industry component of director compensation and nowhere in the Order cited by AG witness Selvaggio did the Commission state that it was unreasonable to expect consumers to pay for the value of Common Stock in the fixed compensation of directors. AIC asserts that the Commission explicitly rejected a Staff proposal to share "Directors' fees and expenses" 50/50 between shareholders and ratepayers based on Staff's assertion that some of the board's duties benefitted shareholders, not ratepayers. Docket No. 10-0467, Order at 103.

The AG argues that AIC has not met its burden of proof for justifying recovery of an incentive award: tangible benefits to ratepayers. AIC notes that AIC witness Shade explained why the stock compensation is not an incentive award: it is not "compensation whose value is dependent on the Company's performance against a predetermined metric." AIC explains that the stock component of compensation is no different from the cash component in this regard. AIC also notes that, regardless, the record shows that that compensation of directors partly in common stock does benefit customers by allowing Ameren to attract and retain a skilled board that protects the interests of shareholders and customers.

b) Staff's Position

Staff maintains that the Commission should not adopt the AG's proposed adjustment to remove \$195,000 of common stock awards to members of the Board because the evidence in this case shows that the compensation is not incentive compensation based on financial performance and that it benefits both customers and shareholders.

Staff asserts that AIC provided information in rebuttal testimony to support recovery of these costs from ratepayers. Staff notes specifically, AIC witness Kelly Hasenfratz explained that RSUs are not prohibited incentive compensation because they are not awarded based on Ameren's financial performance or other measures that incentivize decisions that benefit shareholders. Staff continues stating, additionally, she contended that RSUs provide ratepayer benefits because they encourage and reward employment longevity with Ameren, which in turn, benefits customers with an experienced leadership team and the cost avoidance that comes with a stable one, in addition to reduced turnover, limited costs of employee training and lost productivity, as well as the cost to recruit, hire, and train new employees. Staff notes that AIC witness Hasenfratz also cited Docket Nos. 19-0436, 18-0463 and 18-1775 as examples of recent rate cases in which the Commission approved recovery of RSUs. AIC opines that she noted correctly, however, that the recovery of RSUs was not a contested issue in the first two cases, only in Docket No. 18-1775. Ameren Ex. 25.0 at 7.

Staff asserts that AIC witness Shade noted that the award of common stock as a component of Board compensation is not incentive compensation based on financial performance and it benefits both customers and shareholders by promoting the efficient, effective, and safe operation of Ameren's subsidiaries, including AIC. Staff notes additionally, AIC witness Shade explained that in addition to cash compensation, part of the Board's total compensation consists of an annual grant of shares of common stock having a specified aggregate market value at the time of the award. Staff avers AIC witness Shade further explained that Ameren retains the services of an independent compensation consultant, Meridian Compensation Partners, LLC ("Meridian"), to advise the Board with respect to both director and executive compensation practices. Based on a benchmarking analysis of Ameren's director compensation against a peer group of investor-owned utility companies that are similar to Ameren, Ameren's director compensation program is designed to remain consistent with the market. Ameren Ex. 29.0 at 2-5.

Staff states that AG witness Selvaggio, in her rebuttal testimony (AG Ex. 4.0 at 26), disagreed that stock incentives are necessary to attract and retain the workforce necessary to provide service to Illinois customers. Staff notes AG witness Selvaggio also cited two prior Commission orders that she maintained preclude restricted stock awards from recovery in rates (*Id.* at 27); but she did not address the more recent Commission orders cited by Staff and the Company related to RSUs.

Staff argues that the Commission should not adopt the proposed adjustment to remove \$310,000 (\$115,000 of executive RSUs + \$195,000 of Board common stock) of RSU and common stock awards to AIC executives and members of the Board because the evidence in this case shows that the compensation is not incentive compensation based on financial performance and that it benefits both customers and shareholders.

c) AG's Position

The AG argues that because the record is devoid of evidence that shows tangible ratepayer benefits from common stocks awarded to the Board, the Company fails to satisfy its statutory burden. The AG asserts that the Company seeks to include Board Expenses of \$195,861, which constitute the value of Common Stock awarded to members on the Board. The AG states that Staff witness Pearce initially challenged this amount and sought its removal, asserting that it is incentive compensation based on shareholder-oriented goals, and is therefore not recoverable from ratepayers. Staff Ex. 2.0 at 8. The AG states that AG witness Selvaggio adopted Staff's adjustment. AG Ex. 4.0 at 31. The AG notes Staff withdrew its adjustment after AIC witness Shade provided rebuttal testimony. Staff Ex. 9.0 at 10.

First, the AG contends Ameren's argument that AG witness Selvaggio, "cannot propose a new adjustment[] of its own at the rebuttal stage" (AIC IB at 111) is baseless. The AG argues that the adjustment AG witness Selvaggio adopted is not new, and that it is undisputed that Staff witness Pearce raised the adjustment in her direct testimony. As such, the AG contends there is no prejudice to Ameren in AG witness Selvaggio's assertion of the adjustment in her rebuttal testimony. Further, the AG points out that they filed rebuttal testimony on August 19, 2020, and that the Company had fourteen (14) days or until September 2, 2020 to file its surrebuttal. The AG states that it finds AIC's suggestion that it suffered any prejudice to be untenable.

The AG finds the Company's argument that the common stock component at issue is "not an 'award'" because it is allegedly "not contingent on financial performance or any other specific result" to be without merit. The AG points out that this statement seems to be inconsistent with AIC witness Shade's testimony, in which he stated that their value is annually "established by the Board." AIC Ex. 29.0 at 7. The AG claims the assertion is only true if the Board's setting of common stock value is divorced from any consideration of the Company's fortunes, but nothing in AIC witness Shade's testimony suggests this to be the case. The AG continues, stating that common stock is plainly defined as "shares entitling their holder to dividends that vary in amount and may even be missed, depending on the fortunes of the company." According to the AG, either AIC's common stocks are in fact not common stocks, or there is another explanation that is nowhere provided in the record. Thus, the AG contends Ameren cannot sufficiently satisfy the direct customer benefit standard, which is the standard by which the Commission reviews such

compensation. *Commonwealth Edison Co. v. Ill. Commerce Comm’n*, 398 Ill. App. 3d 510, 519 (2d Dist. 2009).

The AG contends that the remainder of Ameren’s contentions – that AIC must offer incentive compensation because it cannot be competitive without doing so, because Standard and Poor’s Ratings Services (“S&P”) 500 companies provide similar benefits, or because it helps with retention – are all generic statements that the Commission has rejected in the past. The Commission’s decision in Docket No. 16-0458, issued in March 2020, is instructive. Docket No. 16-0458, Final Order. The AG asserts that in that docket, Nicor, a gas utility sought to recover costs for incentive compensation associated with its energy efficiency cost and Staff challenged the inclusion, arguing that the utility offered nothing in record evidence of any actual, tangible consumer benefits. *Id.* at 6. The AG notes that in response, the gas utility – exactly like AIC here – asserted that it offered evidence of greater employee retention, of stiffer competition for top talent in the workforce, and that reduced incentive compensation would diminish the utility’s attractiveness in the marketplace. *Id.* at 10–11.

The AG explains that the Commission was not persuaded and rejected Nicor’s explanations and arguments and in doing so, the Commission expressly affirmed its “longstanding practice [] that incentive compensation costs are not reasonable and recoverable unless the Company can demonstrate tangible benefits to ratepayers.” *Id.* at 12. The AG asserts the record in the instant case is devoid of any such tangible ratepayer benefits. According to the AG, if Nicor’s presentation in Docket No. 16-0458 failed to meet its statutory burden, and it did – even where Nicor produced “10-15 years” of evidence “showing [how] permanent employment ha[d] become much less permanent” (*id.* at 11) – then AIC should also fail. The AG argues that the Company has not provided adequate justification, and that therefore the Commission should reject Ameren’s proposal and remove the value of AIC’s common stock awards to directors by reducing administrative and general expenses by \$195,861.

d) Commission Analysis and Conclusion

The Commission declines to adopt the AG’s proposed adjustment. The AG argues that the stock awarded to the Board is common stock and that the record does not show tangible ratepayer benefits from the stocks awarded to the Board. The Commission disagrees.

The evidence shows that unlike the past cases cited by the AG, the stock component of director compensation in this instance is not incentive compensation based on financial performance. The Commission finds that AIC has shown that the stock awards in this case are RSUs which are awarded solely to incentivize an employee’s continued employment at AIC, rather than awarded to an employee based on the financial performance of the Company. Ameren Ex. 25 at 10.

Staff and the Company argue that RSUs are a method that the Company utilizes to retain experienced leadership which in turn, provides benefits to the ratepayers. AIC also presented evidence that the Company has low turnover and by promoting employment longevity there is increased productivity and reduced turnover, resulting in limited costs for employee training, recruitment, and hiring. Ameren Ex. 25.0 at 10. The Commission has held in the past that employee longevity provides a tangible benefit to

ratepayers through cost avoidance and greater efficiencies in operations due to a more seasoned workforce.

The Commission finds that AIC has demonstrated that there is a correlation between the RSUs issued under the conditions described and ratepayer benefits. The stock component of director compensation in this case is properly allocated as an operating expense.

The Commission finds that the stock award in this case is reasonable.

IV. COST OF CAPITAL AND RATE OF RETURN

A. Uncontested Issues

1. Short-Term Debt (Cost)

AIC proposed a forecasted cost of short-term debt of 1.85%. Staff does not agree with AIC's forecasts in determining its costs of short-term debt. Staff, however, elected not to take issue with the short-term debt cost because it would not have an effect on the estimated weighted average cost of capital.

AIC and Staff agree that the cost of the Company's bank facility should be reflected as 0.016% in the overall cost of capital. The Commission finds that AIC's short-term debt cost is reasonable, it is hereby approved.

2. Long-Term Debt 2019 (Cost)

AIC proposed a cost of long-term debt of 4.229%. Ameren Ex. 8.1. Staff proposed a cost of 4.353%. Staff Ex. 3.0 at 13. AIC and Staff agree on the cost of historical long-term debt issuances; the principal difference between their respective calculations of the cost of long-term debt is the interest rate applied to two future issuances. Staff Ex. 3.0 at 15-16. This issue is discussed in Section IV.B.1 below.

3. Preferred Stock (Cost)

AIC and Staff agree that the embedded cost of preferred stock is 4.98% for December 31, 2019. See Staff Ex. 3.00 at 14. The Commission approves the embedded cost of preferred stock as agreed by Staff and AIC.

B. Contested Issues

1. Long-Term Debt Average 2021 (Cost)

a) AIC's Position

As discussed in Section IV.A.2, the Company and the Staff agree regarding the cost of historical long-term debt issuances. Staff, however, proposed to adjust the Company's embedded cost of long-term debt because Staff disagrees with how Mr. Sagel calculated the interest rate applied to two future issuances. Staff Ex. 3.0 at 15. AIC explains that the Company's estimates are based on adding the current spread estimate for AIC to forecasted 30-year treasury yields from Blue Chip Financial Forecasts. AIC notes that Staff witness Kight-Garlich instead relies on the current 30-year treasury yield instead of forecasted treasury yields, because Staff believes that current interest rates are the best predictor of future interest rates.

Staff initially used a June 4, 2020 30-year treasury yield and the Company's December 2019 yield spread to estimate the coupon rate of issuances forecast for November 2020 and August 2021. In her rebuttal testimony, Ms. Kight-Garlich updated her analysis to use the Company's yield spreads of 145 basis points to the May 29, 2020 30-year treasury yield. The updated average 2021 cost rate is 4.177%.

AIC asserts that the update to Ms. Kight-Garlich's calculation does not cure it of a fundamental flaw. Rather than using the Blue Chip Financial Forecasts projections for 30-year U.S. Treasury yields as the Company did, Ms. Kight-Garlich uses current yields, arguing that they are the best predictor of future rates. AIC notes that may be true in some cases, but the current global pandemic has created a demand for riskless assets that has lowered U.S. Treasury yields to historically low and unprecedented levels. AIC states that her approach creates an abnormally low and unrealistic future expectation of the Company's future 30-year long-term debt issuances.

b) Staff's Position

Staff asserts that, if the Commission adopts an Average 2021 capital structure, then the Commission should also adopt Staff's recommendation to set the embedded cost of long-term debt to 4.177% for the Average 2021 test year ("Average 2021"). Staff Ex. 10.0R, Sch. 10.01 at 5-6.

Staff and the Company agree on the methodology for the calculation of AIC's Average 2021 embedded cost of long-term debt. However, Staff and the Company disagree on two of the inputs used in the calculation. The difference between Ms. Kight-Garlich's calculation and AIC witness Sagel's calculation of the embedded cost of long-term debt is the interest rate applied to the two future issuances in November 2020 and August 2021. Mr. Sagel's estimates of the interest rate of 3.4% for the November 2020 issuance and 3.8% for the August 2021 issuance are based on adding the Company's spread estimate from late 2019 of 1.00% for AIC to forecasted 30-year treasury yields from Blue Chip Financial Forecasts. Staff Ex. 3.0 at 15; Ameren Ex. 22.0 at 12, Sch. D-3. In contrast, Ms. Kight-Garlich forecasted interest rates for both issuances by adding the Company's updated estimated 145 basis point yield spread to the May 29, 2020, yield on 30-year Treasury bonds (1.41%) to arrive at an interest rate of 2.86%. Staff Ex. 3.0 at 16; Staff Ex. 10.0R at 10. Ms. Kight-Garlich relied on the current (May 29, 2020) 30-year treasury yield of 1.41% instead of forecasted treasury yields, because current interest rates are the best predictor of future interest rates. Staff Ex. 3.0 at 15. Accurately forecasting interest rates is problematic. No one can predict with certainty when interest rates will begin to rise, the rate at which they will rise, how long they will rise before falling again, the rate at which they will fall, or even whether they will rise before they fall further. Therefore, the Commission should continue its existing practice and use actual spot interest rates rather than forecasted interest rates to estimate the Company's cost of debt. Staff Ex. 10.0R at 10-11.

Ms. Kight-Garlich's corrections to the forecasted interest rate for the November 2020 and August 2021 issuances result in an embedded cost of long-term debt of 4.177% for the Company for Average 2021. Staff Ex. 10.0R, Sch. 10.01 at 5-6. This is approximately a 5-basis point reduction to AIC's requested embedded cost of debt for Average 2021 of 4.229% (AIC Schedule D-3.). For the preceding reasons and those set

forth in Staff's direct and rebuttal testimonies, if the Commission adopts AIC's proposed Average 2021 capital structure, which Staff recommends that it does not, then the Commission should also adopt Staff's recommendation of the embedded costs of long-term debt of 4.177%.

c) Commission Analysis and Conclusion

Based on the Commission's decision to reject AIC's capital structure in Section IV.B.2, this issue is moot.

2. Common Equity Ratio

a) AIC's Position

AIC states that a significant issue in this proceeding involves determining the proper mix of debt and equity capital that AIC will use to finance its assets going forward. Further, AIC explains that because they must support long-lived assets, utility capital structures tend to include long-term securities, generally a combination of common equity and long-term debt. The specific balance of those items is not easily determined pursuant to a set formula and requires a careful consideration of the facts and circumstances facing the utility. AIC argues that a particular mix of equity and debt that serves the public interest well at a point in time or in one set of circumstances does not mean that the same mix is appropriate at another point in time or in a differing set of circumstances.

The Company asserts it is necessary to strengthen its capital structure with additional equity to support AIC's infrastructure investments to enhance customer service and reliability (with affiliated job creation benefits), while maintaining the strong financial position and credit ratings that AIC has preserved for a number of years, ensuring ongoing access to both debt and equity capital on reasonable terms in both strong and weak financial market conditions, including the current uncertainty (both financially and operationally) caused by the COVID-19 pandemic. AIC asserts that one of the few ways that the Company can mitigate its weakening cash flow and credit profile is to strengthen its balance sheet via a higher common equity ratio.

AIC states that the Company needs a stronger capital structure than was approved in its last rate case, Docket No. 18-0463, principally because AIC has experienced cash flow reductions from the change in the federal corporate tax rate in the Tax Cuts and Jobs Act of 2017 ("TCJA"), which became effective on January 1, 2018. AIC explains that those cash flow reductions have had negative credit quality implications for AIC. The TCJA brought significant benefits to AIC's gas customers in the form of reductions in current taxes and excess deferred taxes. AIC's gas customers have received and are continuing to receive those benefits, initially through the Company's Rider VITA and later through the new base rates established in Docket No. 18-0463. However, realization of these benefits by customers carries with it certain potentially significant adverse financial impacts to AIC. Because of the change in the federal corporate tax rate, AIC collects a lower amount of income tax-related revenue from its customers, resulting in reduced cash flows. The TCJA also excluded public utility property from bonus depreciation eligibility, which has further reduced cash flow contributions from deferred taxes.

AIC maintains that the implementation of lower federal tax collection from AIC customers has resulted in material degradation of the Company's recent and prospective

funds from operation (“FFO”) to debt ratios. The FFO to debt ratio measures a company's ability to pay its debts using its operating cash flow alone, with lower ratios signifying a weaker credit position. This metric is of particular significance because it is one of the most common causes—if not the most common cause—of downgraded credit quality for regulated utilities.

Moody's Investor Services (“Moody's”) has specifically highlighted this trend. In its March 29, 2019 credit opinion on AIC, Moody's underscored the negative cash flow implications from TCJA. In this report, Moody's 12-18 month forward view for the FFO to debt ratio metric was expected to be between 18% and 20% for AIC. This compares to Moody's 12-18 month forward view for the FFO to debt ratio metric cited in its March 9, 2017 opinion on AIC (prior to the passage of TCJA) as being within the range of 24% to 26%.

Significantly, in the March 29, 2019 credit opinion, Moody's indicated that if AIC's FFO to debt ratio remained below 19% on a sustained basis it could lead to a downgrade. AIC explains that lower credit ratings would result in higher interest expense on future AIC debt issuances and higher annual credit facility fees, with such incremental costs to be borne by the Company's customers over time. In addition, a downgrade could place pressure on Ameren's share price. AIC asserts that a lower relative share price makes it more challenging and expensive for the Company to deploy equity capital to fund operations at AIC, with such higher cost of equity capital ultimately passed along to AIC customers in the form of higher rates.

The return on equity (“ROE”) proposed by AIC in this proceeding is not enough on its own to offset the TCJA's adverse effects on AIC's cash flow. Based upon the Company's proposed capital structure that incorporates a 54.091% common equity component within the 2021 test year, and the 10.5% return on equity recommended by Mr. D'Ascendis, AIC's estimated FFO to debt ratio is expected to range from 18.3% to 19.6% from 2019 to 2021, averaging 18.9% for the three years. Based upon this forecast, AIC is expected to be slightly below Moody's FFO to debt ratio downgrade threshold of 19%, on average, over the next three years, creating some risk of a rating downgrade at Moody's, but certainly resulting in limited flexibility to adequately manage and withstand any unexpected negative variance to its cash flow forecast without substantial risk of a ratings downgrade at Moody's. AIC contends that the Commission's regulatory support for AIC's proposed capital structure will be important to ensure that AIC remains financially healthy and maintains its existing credit ratings.

AIC maintains that its proposed capital structure is reasonable. AIC's projected 2021 test year common equity ratio is consistent with those maintained, on average, by the regulated operating subsidiaries of publicly traded utilities in an identified peer group. Mr. Sagel showed that the common equity ratios, based upon permanent capital (excluding short-term debt) of the regulated operating subsidiaries of the identified peer group companies based on their most recent rate cases since January 1, 2013, averaged 54.21%, with a median of 54.08% and a range between 49.0% and 60.50%. AIC's projected 2021 common equity ratio of 54.091%, is just below the average and nearly identical to the median of these regulated operating companies' authorized common equity ratios.

The Commission recently authorized a comparable capital structure for Nicor. Specifically, the Commission authorized Nicor to use a 54.2% equity ratio in an Order entered on October 2, 2019. Docket No. 18-1775, Order at 102. In that case, the Commission found that Nicor provided a reasonable justification for its proposed capital structure. Specifically, Nicor asserted that its proposed capital structure was necessary in response to recent changes in the federal tax structure produced by the TCJA. AIC notes that its business and financial risk complexion is similar to Nicor and they possess comparable credit ratings. Accordingly, the Commission should approve comparable treatment for AIC. AIC's proposed capital structure is the only one that would support a reasonable FFO to debt ratio.

AIC notes that Staff witness Kight-Garlich proposes a capital structure with 50.43% common equity. IIEC/CUB/FEA witness Walters proposes a capital structure with 50% common equity. AIC states that the record shows that their respective common equity ratios, combined with their respective ROE recommendations, would not generate sufficient cash flows to minimize the risk associated with the Moody's FFO to debt downgrade threshold. AIC points out that even at AIC's recommended ROE, a capital structure with 50% common equity would be inadequate and would place unreasonable financial stress on AIC. Accordingly, AIC asserts for this reason alone the Commission should reject both the Staff and IIEC/CUB/FEA proposals.

AIC argues that neither Staff nor IIEC/CUB/FEA provide a valid basis for using a common equity ratio at or near 50%. Ms. Kight-Garlich suggests that AIC's proposed common equity ratio is out of line with industry norms. She contends that a 2019 mean common equity ratio, excluding goodwill, for the gas distribution industry was 47.5%. She further argues that a peer analysis based on companies within her Gas Sample support a lower common equity ratio than the Company's proposed common equity ratio. She also argues that Ameren Corporation's (the Company's parent) equity ratio as being lower than AIC's equity ratio.

AIC agrees that comparing key financial metrics to those of peers can provide some insight into the financial strength of a particular company relative to its peers. This is exactly what the rating agencies (Moody's and S&P) do when they rate companies like AIC. However, AIC notes that in their approach to issuing credit ratings, the agencies are generally thoughtful about not applying a "one-size-fits-all" methodology across companies within a particular industry. In assessing the financial risk of an individual company within the regulated utilities industry, the agencies look at such subjective factors as scale, operating/regulatory diversification, customer mix, execution track record and the degree of perceived constructiveness of applied regulatory frameworks. Based on their evaluation of these and other factors, the rating agencies will assign an appropriate credit rating and outlook, and often identifies the range (the "upgrade/downgrade thresholds") of a key financial metric (e.g., the FFO to debt ratio) within which such credit rating is likely to apply. Moody's, more so than S&P, also may adjust (i.e., notch) the rating of an operating company versus its holding company due to any perceived structural and financial subordination. As evidence of this subjective approach, the upgrade/downgrade thresholds—the FFO to debt metric at both Moody's and S&P—is different for AIC than other similarly-rated companies within the industry (both utility operating companies and holding companies), based on the Company's

distinct operating characteristics and its financial/regulatory profile. So, AIC concludes, one cannot necessarily draw any definitive conclusions about the financial strength of a company by comparing the financial metrics of that company versus a composite group of other companies within the industry.

Moreover, AIC argues, Ms. Kight-Garlich's analysis using her Gas Sample is flawed because her Gas Sample includes solely gas distribution utility holding companies, rather than gas utility operating companies. Use of holding companies as the basis for peer comparison is wholly inappropriate for purposes of this proceeding, and her peer analysis should be disregarded. Mr. Sagel explained that an analysis of the factors typically evaluated in determining whether to consider a regulated subsidiary's actual capital structure or a parent company's capital structure for ratemaking purposes, relying on an industry publication, shows that it is not appropriate to rely on Ameren Corporation's capital structure for ratemaking purposes. AIC does not obtain any long-term debt or preferred stock from Ameren Corporation, but rather issues its own long-term debt and preferred stock to outside investors, thereby managing a largely independent capital structure. Additionally, AIC notes that the Company's long-term debt is secured by its own assets and not the assets of Ameren Corporation. AIC and its issued debt securities have separate and distinct credit ratings from Ameren Corporation, as provided by both S&P and Moody's. Finally, AIC states that Ameren Corporation is not meaningfully diversified into non-utility operations.

Further, Mr. Sagel demonstrated that Ms. Kight-Garlich's calculations for the FFO to debt metric, which is the most important financial metric for both Moody's and S&P and for which upgrade/downgrade thresholds are identified, are faulty. In her analysis, Ms. Kight-Garlich uses a pre-tax weighted average cost of capital ("WACC") to calculate the implied Moody's FFO to debt ratio. Moody's takes a different approach to calculating the FFO to debt ratio, beginning with cash flow from operations in the numerator, adjusted for changes in short-term working capital. Additionally, Moody's makes a number of other identified adjustments to the reported numbers for both the numerator and denominator of the FFO to debt ratio, including an adjustment to add imputed debt associated with the net pension liability of a company. Ms. Kight-Garlich's calculations overstate the numerator of the FFO to debt ratio as a result of the over-simplified pre-tax methodology she applied. AIC notes that Ms. Kight-Garlich's calculations also understate the debt component (the denominator) by failing to include the total debt of the Company as well as the other imputed debt items such as net pension liability. AIC explains that the capital structure of the Company supports all of the business activities of AIC, not only its gas distribution component, so it is therefore appropriate to evaluate key credit metrics and the financial strength of AIC utilizing composite AIC cash flows and the total capital structure of the Company. AIC states that the result of Ms. Kight-Garlich overestimating the numerator and underestimating the denominator of the FFO to debt ratio calculation are metrics that are too rosy and suggest a healthier financial position for AIC than is actually the case.

Mr. Walters contends that the Company's calculations "grossly understate" its FFO to debt ratio and are therefore not reliable. Mr. Sagel explained that Mr. Walters is comparing calculations made at different times using different data. AIC states that the Company's calculation was performed in February 2020, before the Company had closed

its books for the year and thus reflected modeled projections, while Moody's later calculation in April 2020 reflected historical data. The actual 2019 cash flow from operations pre-working capital (which is the numerator in the calculation) included substantial cash flow collections related to regulatory asset and liability changes during the year, which were not included in the projections used by AIC. Thus, AIC concludes, the calculations do not reflect an AIC bias to understate the ratio, but rather differing availability of inputs.

AIC points out that when both AIC and Moody's are using the same data set, they reach similar results. In Moody's most recent credit opinion on AIC, dated April 9, 2020, the agency estimated that the Company's FFO to debt ratio over the next 12-18 months to be in the range of 18-20%. Thus, like AIC, Moody's anticipates some ongoing pressure on this particular metric and is forecasting levels in the next 18 months that are in proximity to the current FFO to debt downgrade threshold (19%) for the Company's current credit rating.

IIEC/CUB/FEA witness Walters also suggests that Moody's is taking "a softer stance on near-term credit metrics for the next two years" due to the COVID-19 pandemic. While Moody's has suggested that the utility industry is perhaps better insulated than most industries to contend with the near-term and potentially longer-term implications of COVID-19, AIC's analysts at Moody's have not specifically indicated that it would relax its required credit metrics for the Company to maintain its current ratings. In the past, Moody's has been explicit with Company representatives that it wants the Company to manage its financing program and balance sheet and build in appropriate "cushion" in order to account for unforeseen circumstances. In the current circumstances, while Moody's has indicated that it would closely monitor the Company's performance and related regulatory support during the COVID-19 pandemic recovery period, it has not specified that the Company has any incremental flexibility regarding its key financial metrics (e.g., the FFO to debt ratio downgrade threshold) during the course of the recovery period. Accordingly, AIC states, Mr. Walters' belief that the Company can count on having some additional margin for error is unfounded.

Lastly, both Staff and IIEC/CUB/FEA contend that the assessment of the financial and credit consequences of the capital structure in this proceeding should only focus on credit metrics specific to the gas delivery business. For example, Mr. Walters argues that "gas ratepayers should only be asked to support credit metrics at the gas division level." AIC's gas operations, however, are financially linked to AIC's other operations, with a single capital structure that supports all of the business activities of the Company. There are no calculated credit metrics at the gas division level. And, AIC contends, since the rating agencies evaluate the business risk and financial risk of the Company as a whole in determining the Company's issuer credit ratings, it is important that any evaluation of AIC's key credit metrics and financial strength consider composite AIC cash flows and the total capital structure of the Company.

Both Staff and IIEC/CUB/FEA suggest that this will result in improper subsidies. Mr. Sagel explained, however, that this financial linkage instead results in scope economies, including access to less-expensive capital. AIC notes that the Company's gas utility business is meaningfully smaller than the electric distribution business (as

measured by current rate base), so the gas operations stand to disproportionately benefit from the economies derived by using a consolidated capital structure.

IIEC/CUB/FEA also argue that the Company's reliance on the Nicor decision, Docket No. 18-1775, is misplaced. IIEC/CUB/FEA argue first that it is a timing issue—because Nicor's request was considered nearer the time of the passage of the TCJA, the impact has passed. The Company states that this makes no sense, demonstrates a clear lack of understanding of the impacts of the TCJA, and is not supported by any evidence. AIC notes that the TCJA did not temporarily reduce tax rates or temporarily eliminate bonus depreciation. Those were permanent changes, the effects of which are evident and will continue to be evident unless and until Congress reverses those changes. The TCJA greatly reduced a source of cash for the Company. AIC states that the mere passage of time or use of a future test year does not somehow create a replacement source of cash, and there is certainly no record evidence that it has or it will. To the contrary, according to AIC, the Company's FFO-to-debt ratios will flirt with the threshold.

The Company states that, moreover, it is not asking that the Commission decide this case based on the record in Docket No. 18-1775. The Company states that it has submitted ample evidence justifying its request. What the Company is requesting is comparable treatment in comparable circumstances.

AIC states that it understands the move from 50% to 54.1% common equity, though justified, may be viewed as too severe to complete in a single step. In this regard, the Company notes that Nicor's approved common equity ratio went from approximately 52% approved in its prior case to 54.2% in the Docket No. 18-1775 decision. The Company acknowledges that the Commission may decide to move the Company's common equity ratio to a point between the 50% approved in its last case and the 54.1% it seeks in this case. AIC indicates that while that would not completely address the concern posed by the TCJA, it would constitute a constructive regulatory action moving in the right direction.

b) Staff's Position

Staff argues that the Commission should approve Staff's recommendation to adopt AIC's December 31, 2019 capital structure, which contains 48.63% long-term debt, 0.11% short-term debt, 0.83% preferred stock, and 50.43% common equity, and reject AIC's proposal to use a forecasted, average 2021 capital structure. As explained further below, Staff's recommended capital structure injects the appropriate balancing of investor and consumer interests while allowing the utility to maintain and support its credit, allowing it to raise needed capital to run its business.

The ratemaking process under the Act, i.e., the fixing of "just and reasonable" rates, involves a balancing of investor interests and consumer interests; it is important that there be enough revenue not only for operating expenses, but also for the capital costs of the business. *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S.Ct. 281, 288 (1944) ("*Hope*"). A reasonable rate is one that permits a utility to earn a sufficient return that assures confidence in the financial soundness of the utility; allowing that utility to maintain and support its credit, and that allows it to raise needed capital to run its business. *Bluefield Waterworks & Improvement Co. v. Pub. Service Comm'n of West Virginia*, 262 U.S. 679, 692, 43 S.Ct. 675, 679 (1923) ("*Bluefield*").

Staff witness Kight-Garlich explains that capital structure affects the value of a firm and, therefore, its cost of capital, to the extent it affects the expected level of cash flows that accrue to parties other than debt and stockholders. Employing debt as a source of capital reduces a company's income taxes, thereby reducing the cost of capital. However, as reliance on debt as a source of capital increases, so does the probability of default. As the probability of default rises, expected payments to attorneys, trustees, and other outside parties increase. Further, the expected cash flows decline as the company foregoes investment that would have been available to it had its financial condition been stronger, including the expected value of the income tax shield from debt financing. Beyond a certain point, a growing dependence on debt as a source of funds increases the overall cost of capital. Therefore, the Commission should not determine the overall rate of return from a utility's actual capital structure if the Commission concludes that capital structure adversely affects the overall cost of capital. Staff Ex. 3.0 at 4-5.

An optimal capital structure would minimize the cost of capital and maintain a utility's financial integrity. Unfortunately, determining whether a capital structure is optimal remains problematic because (1) the cost of capital is a continuous function of the capital structure, rendering its precise measurement along each segment of the range of possible capital structures problematic; (2) the optimal capital structure is a function of operating risk, which is dynamic; and (3) the relative costs of the different types of capital vary with dynamic market conditions. Consequently, one should determine whether the capital structure is consistent with the financial strength necessary to access the capital markets under most economic conditions, and if so, whether the cost of that financial strength is reasonable. Staff Ex. 3.0 at 4-5.

The Company proposes using a forecasted average 2021 capital structure that contains 0.106% short-term debt, 45.125% long-term debt, 0.678% preferred stock, and 54.091% common equity. Ameren Ex. 8.1. In Staff's view, AIC's proposed capital structure is not reasonable. Ms. Kight-Garlich compared the Company's proposed common equity ratio of 54% to the common equity ratio for the gas distribution industry. In 2019, the mean common equity ratio, excluding goodwill, for the gas distribution industry was 47.5%. The Company's proposed common equity ratio of 54.094% is much higher than the average for the gas distribution industry. Staff Ex. 3.0 at 5.

Moody's provides benchmark ratios for regulated electric and gas utilities. Although Moody's does not rigidly adhere to a formula for assigning credit ratings, Moody's publishes ratio ranges that may generally be seen at different rating levels for regulated gas distribution utilities. Moody's focuses on the following four ratios to assess the financial strength of low risk gas and electric utilities: (1) Cash Flow from Operations Before Changes in Working Capital ("CFO pre-WC") interest coverage; (2) CFO pre-WC to total debt; (3) CFO pre-WC less dividends to total debt coverage; and (4) debt to capitalization. In Ms. Kight-Garlich's analysis, each Moody's ratio for AIC, Ameren Corporation, and Staff witness Phipps's Gas Sample ("Gas Sample") was calculated for 2019, and as a three-year average from 2017 through 2019. AIC's ratios were also imputed for 2021 based on both the Company's proposed revenue requirement and Staff's proposed revenue requirement for the Company in this case. Staff Ex. 3.0 at 6.

The Moody's historical financial ratios calculated in Ms. Kight-Garlich's analysis (i.e., the ratios for 2019 and for the 2017-2019 three-year average) imply a credit rating

of A1 for the Company, A3/Baa1 for the Gas Sample, and A for Ameren Corporation. These ratios show that the Company has better (i.e., indicative of higher financial strength) cash flow ratios and lower debt ratios than Ameren Corporation and the Gas Sample. Staff Ex. 3.0 at 7-8.

Further, the Company's proposed equity ratio of around 54% is much higher than its riskier parent company's common equity ratio of only about 45%. Generally, a company with higher operating risk (e.g., Ameren Corporation) must have a higher common equity ratio in order to achieve the same credit rating as a company with less operating risk (e.g. AIC). Additionally, in comparison to its peers, the Company's proposed capital structure indicates a relatively low degree of financial risk for a gas distribution utility. The mean equity ratio for the Gas Sample is 46.51%. This denotes a higher degree of financial risk than a common equity ratio of 54%, as AIC proposes. Thus, in Ms. Kight-Garlich's judgment, the Company's proposed capital structure contains more common equity than needed to support a financially strong gas distribution utility. Staff Ex. 3.0 at 8.

In Ms. Kight-Garlich's opinion, the Company's proposed capital structure, which comprises approximately 45% debt and 54% equity, is not appropriate for determining the Company's costs of equity. The Moody's implied ratio analysis indicates that the Company's proposed capital structure contains a higher common equity ratio than is necessary to maintain its current credit rating. As the Illinois courts have explained, equity is a more expensive form of capital than debt. *Ill. Bell Telephone Co. v. Ill. Commerce Comm'n*, 283 Ill.App.3d 188, 204, 669 N.E. 2d 919, 931, 219 Ill.Dec. 598, 610 (Ill. App. Ct. (2nd) 1996). Consequently, the more equity in a utility's capital structure, the higher the rate of return must be to recover the cost of capital. *Id.*; see also *Citizens Utility Bd. v. Ill. Commerce Comm'n*, 276 Ill. App. 3d 730, 744-45 (Ill. App. Ct. (1st) 1995) ([S]ince equity always costs more than debt, as a corporation increases its proportion of equity, its total cost of capital generally increases, although the cost of debt and the cost of equity both decrease.). Thus, the higher equity ratio used in the Company's proposed capital structure leads to an unreasonably high cost of capital included in the revenue requirement.

In contrast, Staff's proposed revenue requirement, which is calculated using Ms. Kight-Garlich's proposed capital structure comprising 50.4% common equity, results in strong financial metrics that are consistent with AIC's current Moody's credit rating of A3 without unnecessary increase in capital cost. Staff Ex. 3.0 at 9. The Moody's implied ratio analysis for Staff's proposed capital structure and costs suggest a level of financial strength consistent with AIC's actual Moody's credit rating. This suggests that Ms. Kight-Garlich's proposed capital structure, comprising 50.4% common equity, is commensurate with a strong degree of financial strength. Thus, she concludes that her proposed capital structure will not cause a deterioration in AIC's financial strength or result in a credit rating downgrade for AIC. Staff Ex. 3.0 at 9.

Staff concludes that the Commission should adopt Staff's recommendation of the capital structure based on AIC's December 31, 2019 capital structure that contains 48.63% long-term debt, 0.11% short-term debt, 0.83% preferred stock, and 50.43% common equity.

c) IIEC/CUB/FEA's Position

IIEC/CUB/FEA recommend a ratemaking capital structure that consists of 50% common equity. In IIEC/CUB/FEA's opinion, this ratio is consistent with AIC's gas and electric distribution operations, is consistent with the gas utility industry, and is supported by AIC's credit ratings. It is fair to both AIC and its customers and is the same ratio the Commission approved in the Company's last two gas rate cases. Prior to these cases, the Commission approved a common equity ratio of 51.68% in the last fully litigated case for AIC gas rate case in Docket No. 13-0192. IIEC/CUB/FEA Ex. 2.0 at 22.

In stark contrast, IIEC/CUB/FEA point out that AIC is asking the Commission to approve a 54.091% (approximately 54.1% for purposes of this filing) common equity ratio. The utility's reasoning is severely flawed. IIEC/CUB/FEA suggest a common equity ratio of this magnitude unfairly inflates AIC's rates, requiring its customer to pay more for service than is otherwise justified.

IIEC/CUB/FEA note the 50% common equity ratio has been in effect since the 2015 gas rate case. During that time, AIC's credit position has remained strong. IIEC/CUB/FEA stress this ratio has supported AIC's credit ratings, which are not threatened. IIEC/CUB/FEA Ex. 2.0 at 24. In fact, IIEC/CUB/FEA aver AIC has enjoyed a 48.7% authorized common equity ratio, on average, over the past 12 years. Moody's has improved the Company's credit rating four times, and S&P has upgraded AIC's credit rating twice. *Id.* at 23. Finally, in its most recent credit opinion, Moody's did not identify the 50% common equity ratio as a weakness. *Id.* at 23. IIEC/CUB/FEA assert one can reason that Moody's, being intimately aware of AIC's financial health, would have commented had it concluded a 50% common equity ratio was detrimental.

In further support, Mr. Walters examined the authorized common equity ratios for the gas utilities since 2016. As demonstrated in Table 2 of his direct testimony, the 50% common ratio, considering Mr. Walters other observations in support for his recommendation, is in accord with the gas utility industry. Since 2016 and through 2020, the ratio has not deviated from 51.8%. IIEC/CUB/FEA Ex. 2.0 at 5-6; *Id.* at 6, Table 2.

IIEC/CUB/FEA witness Walters noted other observations that point to the overall health of the gas utility industry, all of which substantiate or justify the current common equity ratio. Credit ratings have improved due to the industry overall financial health. AIC is no exception. IIEC/CUB/FEA advance, during this time the Company improved to its current BBB+ rating. IIEC/CUB/FEA Ex. 2.0 at 7. Not only had AIC's credit rating improved, no witness presented testimony, evidence, or suggested that AIC's current credit ratings of BBB+ (S&P) and A3 (Moody's) would be threatened to fall to the investment grade threshold from either S&P and Moody's. The minimum investment grade ratings are BBB- (two notches below AIC's rating from S&P) and Baa3 (three notches below AIC's rating from Moody's). AIC Ex. 8.0 at 9; IIEC/CUB/FEA Ex. 2.3.

IIEC/CUB/FEA note the Commission has previously recognized the minimum guideline for financial integrity is maintenance of an investment bond rating. *Commonwealth Edison Co.*, 1993 Ill PUC 84 * 144 (Docket No. 90-0169 (cons.) (1993). In making this finding the Commission found this criterion was consistent with the *Bluefield* and *Hope* decisions of the U.S. Supreme Court, framing what is required in

determining a fair cost of common equity. Mr. Walters' recommended rate of return supports an investment bond rating for AIC. See IIEC/CUB/FEA Ex. 2.0 at 57.

Mr. Walters also testified utilities have enjoyed significant access to external capital since 2008. *Id.* at 8-9, Fig. 2. Accounting for various indicators, Mr. Walters concluded the high price of utility stocks would aid the utilities' ability to access equity capital on reasonable terms and lower costs. *Id.* at 9.

IIEC/CUB/FEA espouse the 50% common equity ratio is consistent with the equity ratio for the other AIC gas and electric distribution operations. IIEC/CUB/FEA note AIC electric operations is supported by a 50% common equity ratio, and AIC transmission operations is 51.92%. IIEC/CUB/FEA Ex. 2.0 at 23; IIEC/CUB/FEA Group Cross Ex. 3.0 at 4. IIEC/CUB/FEA believe this comparison is important for at least two reasons. First, it suggests the other operations are not in dire straits and their common equity ratios are suitable, and Mr. Sagel has not argued to the contrary. If a 50% common equity ratio is satisfactory for electric operations, it should be adequate for the gas business. Second, a higher common equity ratio means more ratepayer money coming into AIC as a whole, which subsidizes AIC electric and transmission operations. IIEC/CUB/FEA declare it is simple math and in the end, AIC gas customers should not be asked to subsidize the other operations.

IIEC/CUB/FEA find none of AIC's arguments for increasing its equity ratio to 54.1% convincing. IIEC/CUB/FEA concede it is correct Moody's posted a "negative" from "stable" outlook for the industry in June 2018 as AIC witness Sagel observes. IIEC/CUB/FEA note Mr. Sagel heavily relies on this observation in support for the 54.1% common equity ratio. AIC Ex.8.0 at 14. Even so, IIEC/CUB/FEA point out Mr. Sagel fails to inform the Commission the Moody's outlook he cited was short-term, and in November 2019 Moody's changed the outlook back to "stable." IIEC/CUB/FEA Ex. 2.0 at 88. IIEC/CUB/FEA emphasize the November 2019 date was months before Mr. Sagel filed his testimony in this case.

Mr. Sagel later suggested in pointing out his error about the Moody's update, Mr. Walters did not comment on the implication of the Moody's report. AIC Ex. 22.0 at 15. IIEC/CUB/FEA find Mr. Sagel's reply to be most curious, as well as not accurate. It would seem obvious Mr. Walters' noting of the upgrade was intended "to show that the outlook for the industry was not in dire straits as Mr. Sagel would lead us to believe[.]" did express Mr. Walters's opinions about the June 2018 report. That is, the June 2018 report is irrelevant given the later November 2019 report. IIEC/CUB/FEA Ex. 4.0 at 21. Mr. Walters added, "If Moody's revising its outlook on the industry does not implicate the Company's credit ratings or credit quality, I fail to see how Moody's initial downgrade of the industry's outlook to negative in 2018 implicates the Company's credit ratings or credit quality as suggested by Mr. Sagel." *Id.* at 21 -22. Translation: Mr. Sagel cannot have it both ways, and the bottom line is Moody's has AIC at a "stable" outlook, which speaks well of its credit standing.

Next, Mr. Sagel asserts AIC's credit ratings are at risk of a downgrade due to its FFO to debt ratio, as calculated using Moody's methodology. This ratio would be in the range of 18.3% to 19.6% and conceivably could fall below the ratings downgrade threshold of 19% on average. In his analysis, Mr. Sagel examined the projected FFO to

debt ratio for the 2019-2021 period using the requested rate of return, and a scenario where AIC is awarded a 10.50% ROE but with a 50% common equity ratio. IIEC/CUB/FEA assert Mr. Sagel's implied intent was to suggest a 50% common equity ratio would bring AIC below an acceptable FFO to debt ratio. AIC Ex. 8.0 at 15-16; IIEC/CUB/FEA Ex. 2.0 at 89.

IIEC/CUB/FEA witness Walters showed Mr. Sagel's analysis to be in error, as Mr. Sagel grossly understated AIC's 2019 FFO to debt ratio. Moody's updated opinion revealed a FFO to debt ratio of 25.3%, and correcting the 2019 FFO to debt ratio where AIC receives the requested rate of return, actually increases the three-year average ratio 200 basis points and well above the 19% threshold. All this places into doubt Mr. Sagel's analyses as they pertain to 2020 and 2021. IIEC/CUB/FEA Ex. 2.0 at 90.

Finally, IIEC/CUB/FEA note Moody's views the long term positively for utilities having to delay their rate case filing. So, it must be that AIC not having to delay its rate case given its current pendency, would be viewed in an even more positive light from a credit ratings standpoint. *Id.* at 90-91.

IIEC/CUB/FEA further argue that AIC's requested equity ratio is not consistent with other utilities. IIEC/CUB/FEA stress to better grasp the magnitude of AIC's position, one must acknowledge that its 54.1% request is higher than any authorized common equity ratio in the past 20 years. IIEC/CUB/FEA Ex. 2.0 at 22. IIEC/CUB/FEA stress the Company offers little to suggest the Commission should award it an outlier.

IIEC/CUB/FEA note that Mr. Sagel compares AIC's requested common equity ratio of 54.1% to the authorized equity ratios for a group of only 20 operating subsidiaries companies dating back to 2013. AIC Ex. 8.0 at 17. In comparison to Mr. Sagel's diminutive sample group, IIEC/CUB/FEA witness Walters examined 395 gas utility rate cases decided during the same time period. IIEC/CUB/FEA note that excluding reported common equity ratios from four states due to the way ratemaking capital structures are calculated, left a total of 182 decided rate cases with reported common equity ratios since 2013. IIEC/CUB/FEA illustrate the average common equity ratio for the industry, excluding those four states, is 51.66%, and the median is 51.69%—a far cry from a 54.1% common equity ratio. IIEC/CUB/FEA Ex. 2.0 at 92. IIEC/CUB/FEA emphasize the sheer number of cases and data involved in Mr. Walter's analysis wholly invalidates Mr. Sagel's vastly limited data set and any conclusions that could be fairly drawn.

IIEC/CUB/FEA note the best Mr. Sagel could offer in reply is that somehow Mr. Walters' testimony is in conflict because his study suggests an average common equity ratio of 51.66%, but yet Mr. Walters is recommending a 50% common equity ratio. AIC Ex. 22.0 at 20. By virtue of his comment, IIEC/CUB/FEA believe Mr. Sagel overlooks the entirety of Mr. Walters' recommendation, which is to maintain the common equity ratio that is, Mr. Walters testifies, partly responsible for AIC's impressive FFO to debt ratio over the last several years, and at levels that significantly exceed the current upgrade threshold. Mr. Walters added, importantly, IIEC/CUB/FEA confirm AIC has not experienced a ratings downgrade, nor has it been put on a negative outlook since it has been authorized a 50.0% common equity ratio. IIEC/CUB/FEA Ex. 4.0 at 26.

IIEC/CUB/FEA also note that AIC argues weight should be given to its 54.1% common equity request because Nicor was awarded a 54.2% common equity ratio, due

to the impact of TCJA. AIC Ex. 8.0 at 18. IIEC/CUB/FEA believe AIC is wrong on several counts.

First, IIEC/CUB/FEA note there is a timing issue. The Nicor case was decided nearer in time to the enactment of TCJA. The impact, if any, to AIC and taking into account a 2021 test year has now passed and certainly AIC failed to demonstrate it needs to increase its common equity ratio in response to TCJA.

IIEC/CUB/FEA state the credit opinion on AIC from Moody's issued on April 3, 2020, shows AIC's FFO to debt ratio was reduced from 25.5% in 2017 to 21.2% in 2018, the first year TCJA was in effect. Notably at the time TCJA became effective in 2018, AIC's FFO to debt ratio of 21.2% was more than 200 basis points above the downgrade threshold. But by 2019 and after TCJA had been in place, AIC's FFO to debt ratio increased to 25.3%, in-line with pre-TCJA cash flow levels. IIEC/CUB/FEA Ex. 2.0 at 93. IIEC/CUB/FEA conclude the impact, if any, caused by the TCJA has long passed.

Given the more recent in time stable credit ratings and AIC's solid FFO to debt ratio, all this makes AIC's reliance on the Commission's authorized 54.2% equity ratio for Nicor, untimely and irrelevant. Moreover, AIC's statement that "[s]pecifically, Nicor asserted that its proposed capital structure was necessary in response to recent changes in the federal tax structure produced by the TCJA," falls flat. In response to the Nicor arguments about TCJA, the Commission in the Nicor case found: "...the impact of the TCJA is not clear." Docket No. 18-1775, Order at 102. In short, IIEC/CUB/FEA argue the Nicor case is of no help to AIC. IIEC/CUB/FEA assert the Nicor case was decided based on its record. IIEC/CUB/FEA argue AIC cannot have its case decided based on the Nicor record.

IIEC/CUB/FEA further point out that in Mr. Sagel's rebuttal, he made a series of claims suggesting AIC would be subject to a downgrade, depending on the outcome of the case. IIEC/CUB/FEA assert Mr. Sagel's arguments continue to be misplaced and as so summarized by Mr. Walters, AIC's claims are "baseless." IIEC/CUB/FEA Ex. 4.0 at 22.

In summary, IIEC/CUB/FEA conclude the threat of a downgrade from Moody's is nonexistent and offered this summary in reply: First, in its updated credit opinion Moody's shows that AIC produced an FFO to debt ratio of 25.3%, which is basically in line with AIC's pre-TCJA credit metrics. IIEC/CUB/FEA Ex. 2.0 at 90. Second, AIC is expected to maintain FFO to debt ratios consistent with, or higher than the sector's upgrade threshold of 18%. *Id.* at 89. Third, the analysis upon which AIC pins its claim was shown to be faulty. *Id.* at 90; see AIC IB at 120-121; IIEC/CUB/FEA IB at 28-29. Fourth, utilities' investment-grade credit ratings are mostly stable and have improved due, in part, to supportive regulatory treatment. IIEC/CUB/FEA Ex. 2.0 at 10. Fifth, AIC's outlook from both S&P and Moody's is "Stable." *Id.* at 21. Sixth, AIC's ratings have not been threatened or put on "negative" outlook since the TCJA went into effect. IIEC/CUB/FEA Ex. 4.0 at 22. Finally, as explained in IIEC/CUB/FEA Group Cross Exhibit 3.0 at 1 and 3, AIC's credit metrics are expected to improve in the near term as some unprotected EDIT balances are fully amortized: "I [Mr. Sagel] can confirm that, all else equal, AIC's cash flows and credit metrics are expected to increase once the unprotected EDIT balance is fully amortized."

IIEC/CUB/FEA find nothing in the record supports a 54.091% common equity ratio. Its imposition would cause AIC customers to pay more than is necessary to support AIC's credit rating. IIEC/FEA/CUB's recommended 50% common equity ratio, on the other hand, supports the Company's credit rating without overcharging ratepayers.

d) Commission Analysis and Conclusion

The Commission finds that the record does not support an equity ratio of 54.1% as proposed by AIC. The Commission agrees with Staff and IIEC/CUB/FEA that AIC's proposed capital structure includes more common equity than is needed to support what the record evidence shows is a financially strong gas distribution utility.

The Commission notes that AIC's proposed common equity ratio would be a significant increase over the 50% equity ratio the Commission previously approved. Moreover, as Staff and IIEC/CUB/FEA point out, AIC's proposal is significantly higher than the average for the gas distribution industry.

AIC states that it needs a stronger capital structure than what was approved in the last gas rate case primarily due to the impact of the TCJA. While the Commission's decision to allow Nicor a higher common equity ratio in Docket No. 18-1775 was due in part to potential impacts of the TCJA, at that time, the impacts of the TCJA on the gas industry were not clear. While the TCJA did reduce AIC's source of cash, IIEC/CUB/FEA make a convincing argument that AIC's FFO to debt ratio is not as dire as the Company would have the Commission believe.

AIC's reliance on the decision in Docket No. 18-1775 is further misplaced because the common equity balance accepted in that docket was based on Nicor's actual common equity balance for the 12 months ending September 30, 2018, whereas here AIC proposes to use a forecasted average 2021 capital structure. Docket No. 18-1775, Order at 102. Similar to the Nicor docket, Staff proposes in this proceeding to use AIC's actual capital structure as of December 31, 2019.

Record evidence shows that AIC's credit rating is good. Moreover, AIC's credit rating even increased while the Company had a capital structure of 50%. The Commission is cognizant of the current COVID-19 pandemic and that it is creating uncertainty in market conditions. However, there is no record evidence that AIC's current credit rating would be downgraded by either S&P or Moody's. AIC is currently rated BBB+/A3. To fall below investment grade AIC would have to be downgraded by three or four notches.

The Commission tries to balance the interests of investors and consumers. As Staff notes, the optimal capital structure minimizes the cost of capital while maintaining a utility's financial integrity. An excessive equity balance can impose unreasonable costs on customers. Staff and IIEC/CUB/FEA demonstrate that AIC's financial integrity is not in jeopardy. The Commission therefore approves Staff's recommendation to adopt AIC's December 31, 2019 capital structure, which contains 48.63% long-term debt, 0.11% short-term debt, 0.83% preferred stock, and 50.43% common equity.

3. Cost of Common Equity

a) AIC's Position

AIC requests the Commission authorize a ROE of 10.5%. The Company believes this ROE is demonstrated by proper application of quantitative and qualitative analyses. Staff's recommended ROE of 9.32% and IIEC/CUB/FEA's recommended ROE of 9.2% are inadequate to reflect AIC's cost of equity.

AIC explains that the uncertainty surrounding current economic conditions should provoke caution by all regulators, including the Commission. AIC asserts that utility rates must provide a utility with an opportunity in all economic conditions to earn a reasonable return, which in turn affords the utility access to reasonably price capital that allows them to continue to provide safe and reliable service. AIC notes that IIEC/CUB/FEA see some aberrant data in the current market as an opportunity to severely cut AIC's authorized return to a level that will hamper AIC's continued access to reasonably priced capital. As AIC witness D'Ascendis, explained, "during a period of heightened and possibly prolonged market uncertainty, observable market information makes clear that utility investors now face greater risks and require higher returns." Ameren Ex. 23.0 at 18.

The Company is aware that the Commission has favored averaging various ROE recommendations over the last several years, and AIC is also aware of the Commission's expressed reasons for doing so. Accordingly, the Company also presents the Commission with an averaging option based on the data in the record. The averaging option is consistent with the Commission's most recent statements on averaging in a case involving a gas distribution utility. The averaging option would result in a ROE of 9.75%, a ROE fully supported by the evidence of record that does not result in a drastic reduction in ROE at a time of great uncertainty. AIC believes 9.75% is significantly less than investors expect, but it is preferable to the increased risk and pressure that the ROEs recommended by IIEC/CUB/FEA and Staff would place on AIC during a time of uncertainty and volatility.

Framework and Legal Standard

In general terms, the Cost of Capital is the return investors require to commit their capital to a firm. Investors will commit those funds only if the return they expect is equal to, or greater than, the return they require. That required return, whether it is provided to debt or equity investors, has a cost. Investors and analysts refer to the "Cost of Debt" and the "Cost of Equity" as measures of those costs; together, they are referred to as the "Cost of Capital." The Cost of Capital (including the costs of both debt and equity) is based on the economic principle of "opportunity costs." Investing in any asset, whether debt or equity securities, implies a foregone opportunity to invest in alternative assets. For any investment to be sensible, its expected return must be at least equal to the return expected on alternative, comparable risk investment opportunities. Because investments with like risks should offer similar returns, the opportunity cost of an investment should equal the return available on an investment of comparable risk. In that important respect, AIC asserts, the returns required by debt and equity investors represent a cost to the Company.

AIC argues that the Cost of Equity is neither directly observable nor a contractual obligation. Rather, equity investors have a claim on cash flows only after debt holders are paid; the uncertainty (or risk) associated with those residual cash flows determines the Cost of Equity. Because equity investors bear that additional “residual risk,” they require higher returns than debt holders. Whereas the Cost of Debt can be directly observed, the Cost of Equity must be estimated or inferred based on market data and various financial models. AIC explains that each model is subject to its own set of specific assumptions, which may be more or less applicable as market conditions change. AIC further explains that, because the Cost of Equity is premised on opportunity costs, the models typically are applied to a group of “comparable” or “proxy” companies. AIC maintains that the choice of models (including their inputs), the selection of proxy companies, and the interpretation of model results all require the application of reasoned judgment. That judgment should consider data and information, both quantitative and qualitative, not necessarily included in the models themselves. In the end, the estimated Cost of Equity should reflect the return that investors require considering the subject company’s risks, and the returns available on comparable investments. AIC states that a given utility stock may require a higher return based on the risks to which it is exposed, or the growth it may expect, relative to other utilities. That is, although utilities may be viewed as a “sector,” not all require the same return. The assessment of relative risk and growth prospects, and their effect on the Cost of Equity, requires the application of reasoned, experienced judgment applied to a variety of data, much of which is qualitative.

AIC states that the well-known legal standard is that the authorized ROE should provide the Company with the opportunity to earn a fair and reasonable return on its regulated utility operations and should enable efficient access to external capital under a variety of market conditions. *See Bluefield; Hope; see also* Docket No. 18-1775, Order at 118. A return that is adequate to attract capital at reasonable terms enables the utility to provide safe and reliable service while maintaining its financial integrity. In keeping with the *Hope* and *Bluefield* standards, that return should be commensurate with the returns expected elsewhere in the market for investments of equivalent risk. The consequence of the Commission’s Order in this case, therefore, should be to provide AIC with the opportunity to earn a ROE that is: (1) adequate to attract capital at reasonable terms; (2) sufficient to ensure its financial integrity; and (3) commensurate with returns on investments in enterprises having corresponding risks. To the extent AIC is provided a reasonable opportunity to earn its market-based Cost of Equity, neither customers nor shareholders should be disadvantaged.

AIC explains that the key consideration in determining the ROE is to ensure the overall analysis reasonably reflects investors’ view of the financial markets in general, and the subject company (in the context of the proxy companies), in particular. Practitioners, academics, and regulatory commissions recognize that financial models are not precise quantifications of investor behavior but are tools to be used in the ROE estimation process, and they appreciate that the strict adherence to any single approach, or to the specific results of any single approach, can lead to flawed or misleading conclusions. That position is consistent with the *Hope* and *Bluefield* principle that it is the analytical result, as opposed to the method employed, that controls in determining just and reasonable rates. AIC notes that a reasonable estimate therefore considers multiple methods, and the reasonableness of their individual and collective results in the context

of observable, relevant market information. The Commission emphasized this point in a decision last year. In Docket No. 18-1775, the Commission highlighted the need to bring its “methodology into closer alignment with how investors inform their investment decisions” rather than mechanically apply the same, limited models in case after case. Docket No. 18-1775, Order at 118-19.

Mr. D’Ascendis estimated the Company’s Cost of Equity by applying several financial models to a proxy group of seven comparable companies. Specifically, he used the Multi-Stage discounted cash flow (“DCF”) method and the capital asset pricing model (“CAPM”), and he used the Risk Premium and Expected Earnings approaches as corroborating methodologies. Mr. D’Ascendis also considered flotation costs. He calculated a value of 0.6 to represent the cost of common stock issuances. He did not adjust his recommended ROE to reflect flotation costs, but rather considered their effect in determining where the Company’s ROE falls in his range of results.

Mr. D’Ascendis also considered the current capital market environment. He explained that, “although all analyses require an element of judgment, the application of that judgment must be made in the context of the quantitative and qualitative information available to the analyst and the capital market environment in which the analyses were undertaken.” AIC Ex. 9.0 at 17. In particular, he noted that “significant and abrupt increases in volatility tend to be associated with declines in Treasury yields.” *Id.*

AIC states that the recent, dramatic shifts in the capital markets brought about by COVID-19 cannot be overstated. From February 12, 2020 to June 30, 2020, the S&P 500 lost approximately 8.00% of its value and the utility sector lost about 18.00%. During that time, both were down as much as 34.00%. The VIX, which measures expected market volatility, increased six-fold (from 13.74 on February 12 to 82.69 on March 16); on March 9, the 30-year Treasury yield fell below 1.0%.

According to the U.S. Department of Labor (“DOL”), the seasonally adjusted insured unemployment rate for the week ending April 4, 2020 was 8.20%. As DOL explained, “[t]his marks the highest level of the seasonally adjusted insured unemployment rate in the history of the seasonally adjusted series.” *Id.* at 12. The previous high, set in May 1975, was 7.00%. By April 11, 2020, the rate increased to 11.00%.

It is within that broad context that on April 2, 2020, S&P downgraded its outlook on the utility sector from “Stable” to “Negative,” explaining that it expects a 12.00% contraction in Gross Domestic Product (“GDP”) during the second quarter of 2020, reducing commercial and industrial usage. S&P further noted that although companies with decoupling structures may be able to offset some of that lower usage, bad debt expenses likely will increase. Even though some utilities may be able to defer those costs, S&P notes, that in prior incidents, utilities have negotiated with regulatory commissions to “write off some of these costs as part of a larger agreement.” *Id.* at 16-17.

Mr. D’Ascendis offered several observations:

- The full impact and duration of the COVID-19 pandemic are unknown, and outcomes are highly uncertain;

- This uncertainty increases volatility. Volatility increases the chances of investment losses. As a result, investors flee to bonds to limit their investment losses, which is known as “the flight to quality”. Increased levels of bond purchases increase their price, and drive down their yields, i.e., interest rates. Because of this, the current low-interest rate environment is due to increased volatility in the market, and not a steady lowering of the cost of debt over time;
- The same increased market volatility that caused investors’ “flight to safety” also created a situation where utilities are traded similar to the S&P 500. These correlated returns of utility stocks and market indices increase Beta coefficients (a measure of risk), and by extension, investor-required returns; and
- Investor-influencing publications such as Blue Chip Financial Forecasts (“Blue Chip”), S&P, and Moody’s have recognized the risk of the COVID-19 pandemic, and have reflected them in their analyses.

Id. at 4.

Mr. D’Ascendis explained that, in these circumstances, not only can it be concluded that the Cost of Equity has decreased, but that it is also reasonable to conclude that the Cost of Equity has increased, even if not all models are able to precisely measure that increase.

Mr. D’Ascendis’ initial analysis demonstrated that the Company’s Cost of Equity ranged from 10.0% to 10.7%. He recommended a ROE toward the higher end of the range: 10.5%. He updated his analyses for his rebuttal testimony in light of the COVID-19-related events since his initial filing. His updated results showed a range from 10.5% to 11.0%. He maintained that 10.5% is an appropriate, but conservative, measure of ROE.

AIC believes that it is important to emphasize that no model is perfect as crafted or as applied. That is not to say that every application of every model is as reliable or worthy of consideration as every other. To the contrary, some results are less valuable than others, and that is the point that the Commission itself made in Docket No. 18-1775 - when considering whether to rely on a model’s results, we first look to the results. And if those results appear out of line with investors’ expectations or would support a movement toward a lower ROE that would be too extreme for the market, then those results should be disregarded. AIC asserts that the Commission attempts to identify and quantify investor expectations, not try to shape them, which is what IIEC/CUB/FEA and Staff are effectively trying to do.

AIC argues that, moreover, the criticisms leveled by Ms. Phipps and Mr. Walters embody a false sense of precision in the assessment of investor expectations. For example, both disagree with Mr. D’Ascendis’ use of historical GDP growth rates and use growth rate forecasts that they believe are more accurate. But as Mr. D’Ascendis explains, GDP is random, meaning that it is mean-reverting and not serially correlated. The distribution of historical GDP from 1929-2019 shows that the distribution of historical GDP growth approximates the normal distribution. As such, any future value of GDP growth should be expected to revert to its true mean (i.e., the long-term historical mean)

over time. AIC maintains that to claim that there is a more precise estimate defies the data.

AIC states that Staff's ROE is inadequate. Ms. Phipps recommends a ROE of 9.32%, which is an average of her constant growth DCF results (9.45%) and CAPM results (9.18%). Ms. Phipps discards her Non-Constant DCF ("NCDCF") results (7.97%), because the Commission has found that ROEs below 9.00% are anomalous.

Mr. D'Ascendis identified two principal problems with Ms. Phipps' DCF analysis. First, she uses spot stock prices in her DCF model, which can be affected by transitory events. In its Order in Docket No. 11-0282, the Commission noted that it "has also expressed concerns over spot stock prices, particularly in light of the volatility in the stock market." Docket No. 11-0282, Order at 123. Here, market volatility remains a concern, so average prices are the more appropriate measure. In addition, she did not incorporate relevant market data—Value Line projected earnings per share growth rates—in her analysis. AIC notes that incorporating that data would have significantly increased her results and brought them more in line with Mr. D'Ascendis' results.

AIC points out that Mr. D'Ascendis also explained how Ms. Phipps' CAPM analysis is flawed in at least five respects: (1) she did not consider projected risk-free rates in her analysis; (2) she calculates her own Beta coefficients and uses Zacks Beta coefficients, both of which are calculated using monthly returns; (3) she does not consider Bloomberg Beta coefficients, because Bloomberg calculates its Beta coefficients over a two-year time horizon; (4) she does not consider non-dividend paying stocks in her projected market return; and (5) she does not perform an Empirical CAPM ("ECAPM") analysis. Just correcting Ms. Phipps' CAPM analysis to rely solely on the more reasonable Value Line beta coefficients would increase her results from 9.18% to 10.58%.

AIC concludes that Ms. Phipps' DCF and CAPM analyses significantly understate AIC's cost of equity and should be rejected by the Commission. Moreover, notwithstanding the Commission's recent recognition in Docket No. 18-1775 that consideration of the Risk Premium and Expected Earnings approaches might bring the Commission's methodology more in line with investors' thinking, the Staff does not present either analysis. AIC argues that a ROE of 9.32% would be grotesquely inadequate, especially in today's financial climate.

AIC states that IIEC/CUB/FEA's ROE analysis is deeply flawed and produces an absurd result. IIEC/CUB/FEA witness Walters recommends a ROE of 9.20%, within a range of 9.00% to 9.30%. AIC explains that Mr. Walters sets his recommendation by reference to: (1) his Constant Growth DCF model (with median and average results ranging from 9.28% to 9.69%); (2) his Risk Premium study (ranging from 8.80% to 9.50%); and (3) his CAPM analyses (ranging from 7.58% to 9.44%). Mr. Walters' 9.20% recommendation is somewhat above the midpoint of his range; the low end is set by reference to his DCF-based and CAPM-based estimates (9.00%), and the high-end set by reference to his Risk Premium-based estimate (9.30%).

AIC notes that Mr. D'Ascendis disagrees with Mr. Walters with regard to: (1) his assessment of recent authorized returns for gas utilities; (2) specific inputs to his DCF models; (3) the assumptions and methods underlying Mr. Walters' Risk Premium analyses; (4) the MRP component of his CAPM analysis, in particular the expected

market return from which the MRP is calculated; and (5) his failure to reflect flotation costs.

AIC states that Mr. Walters attempts to justify his results by reference to authorized returns for natural gas utilities since 2016, concluding the majority of authorized ROEs since 2016 have been below 9.7%, with a significant portion of those being below 9.5%. But Mr. Walters' data set shows that less than 10% of authorized ROEs between 2016 and 2020 have been equal to or below 9.20%. Consequently, AIC asserts that Mr. Walters' own data demonstrates the unreasonableness of his recommendation.

Moreover, the most recent order involving gas utilities approves a ROE far above what Mr. Walters is proposing. For example, just a few weeks ago, the Michigan Public Service Commission ("PSC") approved a 9.90% ROE for Consumers Energy Company. *Consumers Energy Co.*, MI PSC Case No. U-20650 (Sept. 10, 2020). See also *DTE Electric Co.*, MI PSC Case No. U-20561 (May 8, 2020) (approves 9.90% ROE for electric utility).

Further, average annual data obscures variations in returns and does not address the number of cases nor the jurisdictions issuing orders within a given year. AIC argues that if all individual authorized ROEs in Mr. Walters' data set are charted, rather than annual averages, there is no meaningful trend since 2016, and the trend variable is statistically insignificant. AIC concludes that Mr. Walters' reference to the trend in annual averages inaccurately suggest authorized returns have trended downward, when they have not. In sum, AIC argues that Mr. Walters' analysis is simply not credible: his results are out of line with investor expectations and should be disregarded.

Averaging Alternative

AIC explains that typically, the most contentious and abstract issue in any rate case is determining the appropriate ROE. Unlike operating expenses or plant investment—the reasonableness of which are ascertainable by objective evidence like invoices or bids or easily comprehend and digested market data—determining the Cost of Equity requires the Commission to explore what ROE an investor seeks for an investment of a certain risk profile. AIC notes that there is some objective, indisputable data involved, but the Commission must determine what the data means and must translate it into a return. AIC further notes that not only do parties disagree on what inputs should be used, they also disagree on what equations the inputs go into.

AIC states that it is not surprising then that over the last several years, the Commission has generally averaged the ROE recommendations of the parties in cases where the parties have not reached a settlement on the issue. The Commission does not require averaging and has not employed one set form of averaging; rather, the extent to which and how it uses averaging depends on the specific circumstances of, and recommendations made in, a particular docket. AIC asserts that the recurrence of averaging in the Commission's ROE determinations suggests a continuing unease with concluding that one party's recommendation is correct.

Thus, while in this case the Company requests that the Commission approve its proposed ROE of 10.5%, the Company recognizes that if the Orders of the last several years are any guide, there is a strong likelihood that the Commission will reach a ROE

decision using some form of averaging. Accordingly, while the Company is by no means abandoning its recommended ROE, it also recommends a specific approach to averaging.

The Commission set a ROE for Nicor Gas recently in a proceeding involving some of the same experts as in this case. Nicor Gas and Staff had reached a stipulation that the ROE should be 9.86%; the intervenors opposed the settlement and proposed that the Commission set the ROE at 9.2% (which happens to be the same recommendation that Mr. Walters has proposed in this case).

AIC states that, in considering the evidence, the Commission noted that it must keep in mind various and competing interests:

The Commission is, however “not merely an arbitrator between the utility and parties opposing a rate change[;] it is an investigator and regulator of utilities[,] responsible for the setting of just rates for all affected by the rates.” *Citizens Util. Bd. v. Ill. Commerce Comm’n*, 2018 IL App (1st) 170527, ¶ 25 citing *Citizens Util. Bd. v. Ill. Commerce Comm’n*, 276 Ill. App. 3d 730, 740 (1st Dist. 1995). Furthermore, ratemaking decisions require the Commission to exercise “sound business judgment” rather than the routine application of a legal formula. *People ex rel. Madigan*, 2015 IL 116005, ¶ 23 (“determining rates is a matter of sound business judgment, which the legislature has entrusted to the Commission”); *Iowa-Illinois Gas & Elec. Co. v. Ill. Commerce Comm’n*, 19 Ill. 2d 436, 442 (1960); *Amax Zinc Co. v. Ill. Commerce Comm’n*, 124 Ill. App. 3d 4, 11 (5th Dist. 1984) (“[r]atemaking is not an exact science”).

Docket No. 18-1775, Order at 116.

The Commission rejected the stipulation between the Nicor Gas and Staff and found that it was not supported by substantial evidence in the record. The Commission then turned to determining the ROE based on all the evidence before it. The Commission noted that it traditionally analyzes the values derived from several different financial analysis tools:

While all the witnesses performed their analyses using the DCF and CAPM analyses, their recommendations differ considerably. In addition, Nicor Gas proposed ROEs using two additional models, Risk Premium and Expected Earnings.

Id. at 118. The Commission also noted that each of the proposed models has arguable flaws, and that while the Commission has in the past rejected the Risk Premium and Expected Earnings approaches, and has focused instead on the DCF and CAPM models, there “might be value in exploring additional models presented by the parties, especially Risk Premium and Expected Earnings, to bring our methodology into closer alignment with how investors inform their investment decisions.” *Id.* at 118-19.

The values produced by the various models ranged from a low of 8.7% to a high of 11.2%. *Id.* The Commission said it would look “at the trends among these values to determine consistencies and anomalies.” *Id.* at 119. AIC notes that the Commission rejected the Expected Earnings result because it was substantially higher than Nicor Gas’ initial request of 10.6%, was more than 100 basis points greater than the next highest value and exceeded recent historical awards by more than 145 basis points. *Id.* The Commission also rejected the results of 8.7%, 8.9%, 8.95% and 9.28%, stating:

An authorized rate of return that is not competitive will deter continued investment in the State of Illinois. A reasonable ROE helps ensure that the company can attract capital in order to meet the Commission required infrastructure needs. While the Commission is not bound, as Nicor Gas alleges, by the 9.80% ROE issued 19 months ago, we do note that a significant reduction in ROE from the previous Order would provide regulatory instability. . . .

Id. The Commission found that “these numbers are reflective of CAPM, DCF and Risk Premium Models (“RPMs”) and are fully supported by the record. *Id.* The Commission then averaged three values to arrive at a ROE of 9.73%. “Averaging,” the Commission stated, “is a reasonable approach that has been traditionally used by the Commission and upheld by the courts.” *Id.*

The Company states that it understands that the Commission is not bound in any one case by the methodology it used in a prior case. But this means that while the Commission is not required to use the averaging approach in this case that it used in Docket No. 18-1775; it is also not required to use the approach it used for AIC in 2012. And irrespective of whether it is bound by any of its prior actions, the Commission cannot act arbitrarily—it must have a reasonable basis for disposing of similar situations differently.

AIC also states that the similarities between the cost of equity issues in this proceeding and in Docket No. 18-1775 are striking:

- (1) Nicor Gas was seeking new rates for gas delivery service roughly two calendar years after its prior rates were set. In this case, AIC is seeking new rates for gas delivery service roughly two calendar years after its prior rates were set.
- (2) Nicor Gas’ prior authorized cost of equity was 9.80%, based on a stipulation between the utility and the Staff. Docket No. 17-0124, Order at 100. In this case, AIC’s prior authorized ROE was 9.87%, based on a stipulation between the utility, Staff and intervenors.
- (3) Nicor Gas presented results of risk premium and expected earnings approaches. In this case, AIC presented results of risk premium and expected earnings approaches.
- (4) The range of recommended ROEs was 9.115% (Staff), 9.2% (intervenors) and 10.60 (utility) in Docket No. 18-1775. In this case, the range of recommended ROEs is 9.2% (Intervenors), 9.32% (Staff) and 10.5% (AIC).

- (5) In Docket No. 18-1775, the Commission rejected a stipulated cost of equity, leaving the Commission to set a cost of equity based on a wide range of proposals. Docket No. 18-1775, Order at 116. In the case, there is no stipulation regarding cost of equity, leaving the Commission to set a cost of equity based on a wide range of proposals.
- (6) The Commission believed that market conditions were not “drastically different” from the time of the utility’s prior case. *Id.* at 119. Similarly, the record here does not indicate that AIC’s cost of equity has decreased to any meaningful degree since its last case. Mr. Walters contends that current conditions are too unstable to base the cost of equity on, so he recommends using pre-COVID-19 conditions - the same conditions the Commission was looking at when it set Nicor Gas’ cost of equity at 9.73%. Mr. D’Ascendis explained that, if anything, risks and required returns have increased due to unusual market conditions.

AIC states that the Commission finds itself in a position substantially similar to that it encountered in Docket No. 18-1775. AIC states that if the Commission applies an averaging approach in this docket, AIC proposes that it apply the same parameters that it used in Nicor for the same reasons that it laid in that docket: “ensure that the Company can attract capital in order to meet the Commission required infrastructure needs.” Docket No. 18-1775, Order at 119.

AIC notes that applying the same screen that the Commission did in Docket No. 18-1775 would remove 10.65 (because the Commission removed values greater the utility’s initial request), 9.18, 9.0 and 9.0 (the Commission removed values equal to 9.28 and below). AIC states that averaging these values would result in a ROE of 9.75%, consistent with the result in Docket No. 18-1775. Moreover, AIC points out, while it represents a reduction from the 9.87% the Company is currently authorized to earn, it is not so dramatic as to represent “regulatory instability,” which is one thing the Commission sought to avoid in Docket No. 18-1775.

b) Staff’s Position

Staff asserts that the Commission should adopt Staff’s recommendation and find that AIC’s required ROE is 9.32%. As Staff explains, the Company’s analysis overestimates the investor-required ROE for AIC’s gas distribution operations. Staff’s approach is based on models and inputs that the Commission has repeatedly endorsed in estimating ROE for Illinois utilities.

The difference between Staff’s ROE and the Company’s recommendation stems from different inputs in the DCF and CAPM analyses, as well as the Company’s reliance on additional models not traditionally relied upon by the Commission to establish an authorized ROE for Illinois utilities, including the ECAPM to estimate ROE and an Expected Earnings analysis that serves as a corroborating methodology relied upon by the Company. Staff states that certain inputs of the Company’s DCF and CAPM analysis, as well as the ECAPM and Expected Earnings analysis have, for years, been repeatedly rejected by the Commission and are not appropriate in this instance.

In the recent past, the Commission has either adopted a stipulated ROE for AIC or arrived at an authorized ROE for AIC by beginning with an average of the DCF estimates provided by the Company, Staff, and Interveners, and averaging that DCF estimate with Staff's CAPM estimate. See, e.g., Docket No. 18-0463, Order at 12 (approving stipulated ROE of 9.87% applied to ratemaking capital structure comprising 50% common equity); Docket No. 15-0142, Order at 89 (approving stipulated ROE of 9.60% applied to capital structure comprising 50% common equity); Docket No. 13-0192, Order at 166 (approving litigated ROE of 9.08% applied to ratemaking capital structure comprising 51.68% common equity); Docket No. 11-0282, Order at 128 (approving litigated ROE of 9.06% applied to ratemaking capital structure comprising 53.272% common equity). Applying a similar methodology in the instant case would result in a 9.31% ROE (rounded from 9.305%) based on: (1) averaging the DCF estimates of Staff (9.45%), the Company (9.84%) and IIEC/CUB/FEA (9.0%), to arrive at a composite DCF estimate of 9.43%; and (2) averaging the 9.43% DCF estimate with Staff's CAPM estimate of 9.18%. In this case, Staff recommends a ROE of 9.32%. Not only is this virtually identical to the outcome that would result if the Commission applied the same averaging approach as it has in prior litigated AIC gas rate cases, but it is very close to the average authorized ROE of 9.40% for U.S. gas distribution utilities during the first half of 2020. Staff Ex. 11.0 at 2.

Staff's ROE Analysis

To estimate the ROE for AIC's natural gas distribution operations, Ms. Phipps applied DCF and CAPM analyses to a sample of gas distribution utilities that are similar in risk to the natural gas distribution operations of the Company ("Gas Sample"). Staff Ex. 4.0 at 2. Ms. Phipps' analysis indicates that the ROE for AIC's natural gas distribution operations is 9.32%. *Id.*

Staff's DCF Analysis

According to the DCF model, the market value of common stock equals the cumulative value of the expected stream of future dividends after each dividend is discounted by the investor-required rate of return. Staff Ex. 4.0 at 3-4. Since DCF analysis incorporates time-sensitive valuation factors, it must correctly reflect the timing of the dividend payments that stock prices embody. *Id.* at 4. The companies in the Gas Sample pay dividends quarterly; therefore, Ms. Phipps measured the annual required ROE by applying a quarterly constant-growth DCF model and a quarterly NCDCF model. *Id.*

The constant growth DCF model assumes dividends will grow at a constant rate into perpetuity and the market value of common stock (i.e., stock price) equals the sum of the discounted value of each dividend. *Id.* at 5. Determining the market-required rate of return with the DCF methodology requires a dividend growth rate that reflects the expectations of investors. *Id.* Although the current market price of a security reflects aggregate investor expectations, market consensus expected growth rates cannot be measured directly; therefore, Ms. Phipps measured the market-consensus expected growth for the Gas Sample companies indirectly with 3-5 year growth rates forecasted by securities analysts and disseminated to investors by Zacks and Reuters as of May 19, 2020. *Id.* at 5-6.

The NCD CF model assumes that dividend growth will occur in stages. Ms. Phipps modeled three stages of dividend growth that she applied to the current dividend to estimate an expected stream of dividends. *Id.* at 6. The discount rate that equates the present value of this expected stream of cash flows to the company's current stock price equals the market-required return on common equity. *Id.*

Ms. Phipps used the same Zacks and Reuters growth rate estimates that she employed in her constant growth DCF model to estimate growth for the first, near-term growth stage of her NCD CF analysis, which is assumed to last five years. *Id.* For the second stage, which is a transitional growth period lasting from the end of the fifth year to the end of the tenth year, she assumed growth would equal the average of the first stage and third stage growth rates. *Id.* Finally, Ms. Phipps calculated nominal overall economic growth beginning in 2030 to estimate the long-term growth expectations of investors for the third, or "steady-state," growth stage, which is assumed to begin after the tenth year and continue into perpetuity. *Id.* at 6-7.

Staff states that the overall economic growth rate is composed of two parts: the expected real growth rate and the expected inflation rate. *Id.* at 7. She combined the Energy Information Administration's ("EIA") forecasts of real GDP of 1.8% over the 2030-2050 period and the expected inflation rate of 1.7%, which is based on the difference in yields on U.S. Treasury bonds (which contain a premium for expected inflation) and U.S. Treasury Inflation-Protected Securities (which do not contain a premium for expected inflation) to estimate the long-term growth rate of 3.6% for the third stage of her NCD CF analysis. *Id.* at 7-8. In addition, Ms. Phipps also calculated the nominal economic growth EIA forecasts for the 2030-2050 period (4.2%). *Id.* at 8. Finally, she combined the 4.2% EIA forecast with the 3.6% nominal economic growth estimate described above to derive a long-term estimate of overall economic growth of 3.9%. *Id.*

Ms. Phipps explained that, while the long-term GDP growth rate might be biased upward for generally below average growth companies such as utilities, it is a reasonable proxy for the growth rate that investors could reasonably expect utilities to sustain over the long-term. *Id.* at 9. Therefore, the long-term GDP growth rate is a reasonable estimate for the steady-state stage growth for the Gas Sample. *Id.*

For both her constant-growth and NCD CF models, Ms. Phipps measured each Gas Sample firm's current stock price with its closing market price from May 19, 2020, because a current stock price reflects all information that is available and relevant to the market. *Id.* She explained that stock prices reflect the market's concurrent expectations of the cash flows the securities will produce and the rate at which those cash flows are discounted. *Id.* Thus, an observed change in the market price does not necessarily indicate a change in the required rate of return on common equity. *Id.* Rather, a price change may reflect investors' re-evaluation of the expected dividend growth rate. *Id.* In addition, stock prices change with the approach of dividend payment dates. *Id.* Consequently, when estimating the required return on common equity with the DCF model, one should measure the expected dividend yield and the corresponding growth rate concurrently. *Id.* at 9-10. Using an historical stock price along with current growth expectations or combining an updated stock price with past growth expectations would likely produce an inaccurate estimate of the market-required rate of return on common equity. *Id.* at 10.

Most utilities declare and pay the same dividend per share for four consecutive quarters before adjusting the rate. *Id.* Consequently, Ms. Phipps assumed the current declared dividend rate will remain in effect for a minimum of four quarters and then adjust during the same quarter it changed during the preceding year; if the utility did not change its dividend during the last year, she assumed the rate would change during the next quarter. The expected growth rate was applied to the current declared dividend rate to estimate the expected dividend rate. *Id.*

Ms. Phipps's constant growth DCF analysis estimated that the required rate of return on common equity for the Gas Sample averages 9.45%. Staff Ex. 4.0 at 11, Sch. 4.05. Her NCD CF analysis estimated that the required rate of return on common equity for the Gas Sample averages 7.97%. *Id.* However, she does not rely on the results of her NCD CF analysis in this case because, in a prior case, the Commission only included ROE recommendations of 9.0% or higher in its calculation of the authorized ROE. Relying on the results of her NCD CF analysis in the instant case would result in a ROE recommendation that is below 9.0%. *Id.*

Staff's CAPM

Ms. Phipps relied upon the 1.44% yield on thirty-year U.S. Treasury bonds as of May 19, 2020, to estimate the risk-free rate of return. *Id.* at 17. Ms. Phipps explained that the proxy for the nominal risk-free rate should contain no risk premium and reflect similar inflation and real risk-free rate expectations to the security being analyzed through the risk premium methodology. *Id.* at 13. U.S. Treasury securities are virtually free of default risk (i.e., the possibility of default on principal or interest payments) by virtue of the federal government's fiscal and monetary authority. *Id.* at 13-14. However, due to relatively long terms to maturity, U.S. Treasury bond yields also contain an interest rate risk premium that diminishes their usefulness as measures of the risk-free rate. *Id.* at 14. Consequently, the U.S. Treasury bond yield is an upwardly biased estimator of the long-term risk-free rate due to the inclusion of an interest rate risk premium associated with its relatively long term to maturity. *Id.* at 17.

Ms. Phipps estimated the expected rate of return on the market by conducting a DCF analysis on the firms composing the S&P 500. *Id.* at 18. She eliminated firms not paying dividends, or firms for which neither Zacks nor Reuters growth rates were available. *Id.* The resulting company-specific estimates of the expected rate of return on common equity were then weighted using market value data from Zacks. *Id.* The estimated weighted average expected rate of return for the remaining 423 firms, composing 75.0% of the market capitalization of the S&P 500, equals 12.19%. *Id.*

Staff explains that beta measures risk in a portfolio context. *Id.* When multiplied by the market risk premium, a security's beta produces a market risk premium specific to that security. *Id.* at 18-19. Ms. Phipps used Value Line betas, Zacks betas, and a regression analysis to estimate beta for the Gas Sample. *Id.* at 19.

Value Line estimates beta for a security in two steps. *Id.* First, the returns of each company are regressed against the returns of the New York Stock Exchange Composite Index ("NYSE Index") to estimate a raw beta. *Id.* The regression analysis employs 260 weekly observations of stock price data. *Id.* Then, an adjusted beta is estimated.

The regression analysis beta estimate for the Gas Sample was calculated in three steps. *Id.* at 20. First, the U.S. Treasury bill return is subtracted from both the average percentage change in the sample's stock prices and the percentage change in the NYSE Index to estimate the return in excess of the risk-free rate. Second, the excess returns of the sample are regressed against the excess returns of the NYSE Index to estimate a raw beta. The regression analysis employs sixty monthly observations of stock and the U.S. Treasury bill return data. *Id.* Third, the beta is adjusted.

Like Staff's regression beta, Zacks employs 60 monthly observations in its beta estimation. *Id.* at 21. However, Zacks' betas regress stock returns against the S&P 500 Index rather than the NYSE Index. Further, the beta estimates Zacks publishes are not adjusted (i.e., raw betas). Thus, Ms. Phipps adjusted them using the same formula used to adjust the regression beta. *Id.*

Adjusting a raw beta produces a more accurate forward-looking beta estimate. Empirical tests of the CAPM suggest that the linear relationship between risk, as measured by raw beta, and return is flatter than the CAPM predicts. That is, securities with raw betas less than one tend to realize higher returns than the CAPM predicts. Conversely, securities with raw betas greater than one tend to realize lower returns than the CAPM predicts. *Id.* Adjusting the raw beta estimate towards the market mean value of 1.0 results in a linear relationship between the beta estimate and realized return that more closely conforms to the CAPM prediction. Securities with raw betas less than one are adjusted upwards, thereby increasing the predicted required rate of return towards observed realized rates of return. Conversely, securities with raw betas greater than one are adjusted downwards, thereby decreasing the predicted required rate of return towards observed realized rates of return. *Id.*

Ms. Phipps explained that she relied on multiple methods to estimate beta because true betas are forward-looking measures of investors' expectations of market risk and, as such, true betas are not observable. *Id.* at 22. That is, betas that Staff calculates and betas that Value Line and other financial information services publish are proxies for true betas. Therefore, like all proxies, beta estimates are subject to measurement error. Thus, there is no single, definitively "correct" beta for a given company. *Id.* Beta measurements can overstate a security's risk and consequently its cost at times and understate it at other times. Indeed, this is true of any cost of common equity estimation methodology. The inevitable presence of measurement error is why Staff recommends against reliance on any single model to estimate the cost of common equity. *Id.* In fact, Ms. Phipps's analysis relies on multiple models involving a sample composed of multiple companies. Similarly, using multiple approaches to estimate beta mitigates the effect on Ms. Phipps's cost of common equity estimate of measurement error in her Gas Sample's beta estimate. *Id.*

Since both the Zacks beta estimate and the regression beta estimate are calculated using monthly returns rather than weekly returns (as Value Line uses), she averaged the Zacks and regression betas to avoid over-weighting the monthly return-based betas. *Id.* at 22. She then averaged that result with the Value Line beta to obtain a single estimate of beta for the sample. For the Gas Sample, the regression beta estimate is 0.58 and the Value Line beta and Zacks beta average 0.85 and 0.59, respectively. *Id.* at 22-23. The average of the Zacks and regression betas is 0.59. *Id.* at 23. Averaging this monthly beta with the weekly Value Line beta (0.85), produces a beta

for the Gas Sample of 0.72. *Id.* Based on Ms. Phipps's CAPM analysis, the estimated ROE for the Gas Sample is 9.18%. *Id.* at 23-24.

Staff's ROE Recommendation

Staff assert that a thorough analysis of the required rate of return on common equity requires both the application of financial models and the analyst's informed judgment. *Id.* at 24. An estimate of the required rate of return on common equity based solely on judgment is inappropriate. Nevertheless, because techniques to measure the required rate of return on common equity necessarily employ proxies for investor expectations, judgment remains necessary to evaluate the results of such analyses. Along with DCF and risk premium analyses, Ms. Phipps considered the observable 3.23% rate of return the market currently requires on less risky A rated long-term debt. *Id.*

Based on Ms. Phipps's analysis, in her judgment, the investor-required rate of return on common equity for natural gas distribution operations equals 9.32%. *Id.* Her ROE estimate relies on the 9.18% CAPM estimate and the 9.45% constant growth DCF estimate for the Gas Sample. She derived the investor-required rate of return on common equity, 9.32%, from a simple average of the CAPM and DCF results $((9.18\% + 9.46\%) / 2 = 9.315\%$, rounded to 9.32%). *Id.* at 25.

Ms. Phipps explained that the models from which the individual firm estimates were derived are correctly specified and, thus, contain no source of bias. *Id.* Moreover, excepting the use of U.S. Treasury bond yield as a proxy for the long-term risk-free rate and the use of 3-5-year analysts' growth estimates as a proxy for the long-term growth estimates in the market rate of return, Ms. Phipps is unaware of bias in her proxy for investor expectations. In addition, measurement error has been minimized through the use of a sample, since estimates for a sample as a whole are subject to less measurement error than individual company estimates. *Id.*

Ms. Phipps explained further that the Gas Sample serves as a proxy for the target company, AIC, and should therefore reflect the risk of AIC. *Id.* If the proxy group does not accurately reflect the risk level of the target company, an adjustment should be made. The credit ratings assigned to a company reflect both business and financial risk. *Id.* at 25-26. Since credit ratings reflect a company's overall risk, Ms. Phipps compared the credit ratings of the Gas Sample and AIC. *Id.* at 26. If the proxy group does not accurately reflect the risk level of the target company, an adjustment should be made. *Id.*

The Gas Sample has an average credit rating of A3 from Moody's and an average credit rating of A- from S&P. Staff Ex. 4.0 at 26, Sch. 4.07. Moody's assigns AIC a rating of A3 and S&P assigns AIC a rating of BBB+. Staff Ex. 4.0 at 26. S&P notes that AIC's rating is in line with Ameren Corporation's group credit profile. *Id.* However, AIC's standalone credit profile is A- before any adjustment for its affiliation with Ameren Corporation. Therefore, Ms. Phipps relied on the standalone S&P rating of A- and the Moody's credit rating of A3. On this basis, the overall risk of the Gas Sample is comparable to the overall risk of AIC. Consequently, no risk adjustment is warranted in this case. *Id.*

Staff's Response to the Company's ROE Analysis

Mr. D'Ascendis relies upon the following approaches to estimate ROE: (1) a multi-stage DCF model (also referred to as a NCD CF model) that produced estimates ranging from 8.84% to 10.84%; (2) CAPM and ECAPM analyses that produced estimates ranging from 8.84%-11.68% and 9.97%-12.68%, respectively; (3) a bond yield plus risk premium approach that produced estimates ranging from 9.87% to 9.93%; and (4) an expected earnings approach that is considered by the Company to be a corroborating method, which estimated a 10.65% ROE. *Id.* at 3, 6-8. The Commission should reject the Company's ROE proposal. Ms. Phipps identified errors that lead AIC witness D'Ascendis to over-estimate the Company's ROE.

Ms. Phipps identified inputs and assumptions used in the Company's NCD CF analysis that result in the model overstating the investor-required rate of return for AIC's gas distribution operations. Those errors that lead to overstating the investor-required ROE stem from using historical data to estimate the assumed growth rate and payout ratio for the third stage of NCD CF model, which is assumed to last into perpetuity. The Company's long-term growth rate of 5.23% is based, in part, on the historical growth in real GDP of 3.21% from 1929-2019. Ameren Ex. 9.0 at 49. As Ms. Phipps explained in testimony, not only does historical data favor outdated information that the market no longer considers relevant over the most recently available information, but historical data also reflects conditions that may not continue in the future. Staff Ex. 4.0 at 31. Ms. Phipps explained further that use of average historical data implies reversion to a mean. *Id.* at 32. The Company claims that, absent knowledge to the contrary, it is reasonable to assume that real GDP growth will revert to its long-term mean. Ameren Ex. 9.0 at 52. The Company is incorrect. No method exists for determining the true value of that mean let alone the length of time over which mean reversion will occur. Staff Ex. 4.0 at 32-33. Consequently, any historical measurement period chosen is arbitrary, rendering the results uninformative. *Id.* at 33.

In addition, the Company's NCD CF model also assumes the payout ratios of the proxy group of gas companies ("Proxy Group") will converge to the historical industry mean of 63.58%, which equals the median payout ratio over the 1990-2019 measurement period for all companies classified as Natural Gas Utilities by Value Line. Ameren Ex. 9.0 at 16. However, Mr. D'Ascendis has not shown that his estimate of the historical industry average is an appropriate predictor of each Proxy Group company's long-term payout ratio. To the contrary, his own data shows that only one of the seven companies in the Proxy Group is expected to increase its dividend payout ratio from 2020 to 2023. Staff Ex. 4.0 at 33. Nevertheless, the Company's NCD CF model's assumed 2030 payout ratio is higher than each company in the Proxy Group's individual Value Line forecasted payout ratio for 2021-2023. *Id.*

The assumed payout ratio of 63.58% implies a retention rate of 36.42% (i.e., Retention Rate = 1 – Payout Ratio). Staff Ex. 4.0 at 30. Ms. Phipps explained that in order to sustain 5.23% growth given the assumed 36.42% retention rate, the Proxy Group companies would have to indefinitely sustain on average a 14.36% return on new common equity investment. *Id.* at 31. This is 36.76% higher than the Company's ROE recommendation of 10.50% for AIC's gas operations. *Id.* The implausibility of the Proxy Group sustaining an average 14.36% ROE indefinitely becomes obvious when one

considers the ROE for the Proxy Group averaged 9.79% during 2009 – 2018. Furthermore, a 14.36% return on retained earnings would exceed Value Line's projected 10.57% ROE for the Proxy Group. *Id.*

Ms. Phipps quantified the effect of measurement error resulting from the use of historical data in the Company's NCD CF model and demonstrated that the unnecessary measurement error raised the resulting NCD CF-derived ROE estimates. She testified that the Company's NCD CF model would produce ROE estimates ranging from 7.37% to 9.99% (versus 8.84% to 10.84%) if the NCD CF model assumed a third stage growth rate of 3.9% (per Staff's calculation of long-term economic growth) and if it assumed that each Proxy Group company's payout ratio remained at Value Line's forecasted 2023 level. Staff Ex. 4.0 at 33.

Importantly, Staff notes the Commission has repeatedly rejected the use of historical data in determining a company's ROE. See, e.g., *Cent. Ill. Light Co. d/b/a Ameren CILCO*, *Central Ill. Pub. Svc. Co. d/b/a AmerenCIPS*, and *Ill. Power Co. d/b/a AmerenIP*, Docket Nos. 06-0070/06-0071/06-0072 (Cons.), Order 142-143 (Nov. 21, 2006); *Cent. Ill. Light Co. d/b/a AmerenCILCO*, *Cent. Ill. Pub. Svc. Co. d/b/a AmerenCIPS*, and *Ill. Power Co. d/b/a AmerenIP*, Docket Nos. 09-0306/09-0307/09-0308. (Cons.), Order at 216 (Apr. 29, 2010); *Consumers Ill. Water Co.*, Docket No. 03-0403, Order at 42 (Apr. 13, 2004); *Ill.-Am. Water Co.*, Docket No. 95-0076, Order at 70 (Dec. 20, 1995); *la.-Ill. Gas and Electric Co.*, Docket No. 92-0357, Order at 66 (Jul. 21, 1996).

AIC's Flotation Cost Adjustment to the NCD CF

According to Staff, Mr. D'Ascendis adjusted the NCD CF model to calculate an unwarranted flotation cost adjustment. Although he did not make an explicit adjustment to the Company's ROE for flotation costs, he claimed to consider the effect of flotation costs in determining where AIC's ROE falls within the range of results. Ameren Ex. 9.0 at 27. The Company's flotation cost calculation should not be considered in setting the investor-required rate of return on common equity for AIC. The Commission should reject AIC's flotation cost calculation as it did in Docket No. 11-0282. In that case, Mr. Hevert's direct testimony included a flotation cost adjustment based on the flotation costs of Ameren and ten other utilities; in rebuttal testimony, Mr. Hevert estimated flotation costs based upon the last two common equity issuances by Ameren. Like the instant case, in Docket No. 11-0282, Mr. Hevert did not make an explicit adjustment to AIC's ROE to account for flotation costs, but instead "considered flotation costs when determining where within the range of results the ROE reasonably falls." *Ameren Ill. Co. d/b/a Ameren Ill.*, Docket No. 11-0282, Order 126 (Jan. 10, 2012). In that case, the Commission's Order concludes:

The Commission concludes that the record in this proceeding does not justify an upward adjustment to the cost of common equity to reflect flotation costs. In fact, it appears no witness has proposed such an adjustment. Staff correctly points out that the Commission is open to considering the impact of flotation costs on the authorized return on equity in certain circumstances. The Commission is not, however, amenable

to approving a flotation cost adjustment based upon an average of flotation costs for other utilities, as Mr. Hevert calculated in his direct testimony. Despite all of the testimony and argument on this issue, the Commission finds no basis to consider flotation costs in establishing AIC's cost of common equity in this proceeding.

Docket No. 11-0282, Order at 126. The Commission rejected AIC's flotation cost estimate again in Docket No. 13-0192 stating, "[t]he Commission's rationale in Docket No. 11-0282 is equally applicable to the record in the current case. In the instant proceeding, the Commission finds, as it did in Docket No. 11-0282, that the record does not justify an upward adjustment to the cost of common equity to reflect flotation costs." Docket No. 13-0192, Order at 165-66. For all the foregoing reasons, the Company's NCD CF results, including the Company's consideration of flotation costs, should be given no weight in determining the ROE for AIC's gas utility operations.

AIC's CAPM

The CAPM requires estimates of beta, the risk-free rate of return, and the rate of return on the market. Staff Ex. 4.0 12. Ms. Phipps identified shortcomings in each of those Company inputs that lead to the Company's CAPM analyses overstating the investor-required rate of return for AIC's gas distribution operations.

Beta

Ms. Phipps identified two problems with the Company's CAPM analysis that relate to its beta estimates: (1) the Company's CAPM relies exclusively on betas calculated using weekly returns; and (2) the Company's use of Bloomberg beta estimates are based on only two years of weekly observations (versus five years of data used for all the other beta estimates relied on by ROE witnesses in this case). Each of these shortcomings add unnecessary measurement error to the Company's CAPM estimates.

First, both beta estimates Mr. D'Ascendis uses in his CAPM – i.e., Value Line and Bloomberg betas – are calculated using weekly return intervals. Staff Ex. 4.0 at 36. This is problematic because the major reason for observed variation among published betas is the interval effect (i.e. monthly returns versus weekly returns) due to non-synchronous trading, which is greater for weekly data than with monthly data. *Id.* By relying exclusively upon betas calculated using weekly data, Mr. D'Ascendis has introduced bias into his CAPM analysis that could have been mitigated by including a beta estimate derived from monthly return intervals. *Id.* Because of this, the Commission has expressed its preference for using a combination of weekly and monthly beta estimates in CAPM analyses. In Docket Nos. 14-0224/14-0225 (Cons.), the Commission's Order noted, "Staff's beta parameter averaged weekly Value Line betas with an average of monthly betas from Zacks and betas calculated using a regression analysis that the Commission has routinely adopted for the CAPM." *N. Shore Gas Co. and The Peoples Gas Light and Coke Co.*, Docket Nos. 14-0224/14-0225 (Cons.), Order at 133 (Jan. 21, 2015). The Commission's Order in Docket Nos. 09-0306, provides the Commission's rationale for routinely adopting beta parameters that reflect both weekly and monthly beta estimates when it states:

The Commission further finds that Staff's use of both monthly and weekly beta estimates, is superior to the use of only one or the other. It appears from the testimony that there are weaknesses present in both monthly and weekly beta estimates; however, use of both should ameliorate those weaknesses and assist the Commission in identifying this input which measures investor's expectations of the quantity of non-diversifiable risk inherent in a security.

Cent. Ill. Light Co., Docket Nos. 09-0306-09-0311 (Cons.), Order at 213.

In addition, the reliability of the Company's Bloomberg betas is questionable because they are based on only two years of data. *Ameren Ex. 9.0* at 57. Compared to the five-year measurement period of the betas Staff employs, two-year betas are more prone to measurement error arising from short-term changes in risk and investor risk preferences, which can bias the beta estimate. *Staff Ex. 4.0* at 37. For example, a decrease in a company's systematic risk could, paradoxically, increase its estimated beta, which would generally be interpreted as signaling an increase in a company's systematic risk. Such a counter-intuitive result is a consequence of the inverse relationship between risk and stock values. As the risk of a stock declines, its price rises, all else equal. *Id.* Thus, in a rising stock market, the beta calculated will rise for a stock that is declining in risk, all else equal. Consequently, a longer measurement period should be used as a more complete business cycle will include both rising and falling markets, reducing measurement error. Because of this, the Commission has previously rejected the use of a two-year beta measurement period and has, instead, traditionally relied upon betas calculated with five years of data as more reliable. See *Ameren Ill. Co.*, Docket No. 13-0192, Order at 164. Moreover, a Commission decision on this matter has been affirmed by the Illinois Fourth District Appellate Court. Docket Nos. 4-14-0173, 4-14-0182 Cons., 2015 IL App (4th) 140173, June 2, 2015 at 45.

Risk-Free Rate

The Company's CAPM uses three estimates of the risk-free rate of return: (1) a 30-day average yield on 30-year U.S. Treasury bond yields (i.e. 2.25%); (2) a near-term projected 30-year U.S. Treasury bond yield for the six quarters ending June 2021 (i.e. 2.42%), as published by Blue Chip; and (3) a Blue Chip long-term projected 30-year U.S. Treasury bond yield (i.e. 3.45%). *Ameren Ex. 9.0* at 54-55. Ms. Phipps points out that U.S. Treasury bond yields reflect market forces, while Blue Chip forecasts of U.S. Treasury bond yields do not. *Staff Ex. 4.0* at 39. The risk-free rate is reflected in the return that investors are willing to accept in the market. *Id.* At the time of the Company's initial ROE analysis, investors were willing to accept a 1.99% return on 30-year U.S. Treasury bonds, which includes an interest rate risk premium associated with its relatively long term to maturity. *Id.* at 40. In contrast, the forecasted Treasury yields used by Mr. D'Ascendis to estimate the risk-free rate for his CAPM analysis range from 2.25% to 3.45%.

The Company's use of forecasted U.S. Treasury bond yields as a proxy for the risk-free rate of return is inappropriate and should be rejected. Ms. Phipps testified that accurately forecasting the movement of interest rates is problematic. *Staff Ex. 4.0* at 38.

In AIC's last rate case, Docket No. 18-0463, the AIC witness relied on Blue Chip forecasts of the U.S. Treasury bond yield in 2018 and 2019 to estimate the risk-free rate of return for his CAPM, ECAPM, and bond yield plus risk premium analyses. *Id.* In that case, the Blue Chip forecast resulted in a near-term projected 30-year Treasury bond yield of 3.32%, which equals the average consensus projections of the 30-year Treasury bond yield for the six quarters ended March 2019. *Id.* at 39. In reality, the 30-year Treasury bond yield was 3.04% over the same measurement period. Given the difficulty of accurately forecasting interest rates, the Commission should, instead, continue to rely on current, observable market interest rates.

In fact, the use of current, observable market interest rates renders the use of forecasted interest rates unnecessary because U.S. Treasury bond yields reflect all relevant, available information, including investor appraisals of the value of current expectations for the future. *Id.* In other words, if investors believe that the forecasts are valuable, that belief would be reflected in current market interest rates. Conversely, if investors believe the forecasts are not valuable, that belief would also be reflected in current market interest rates. In sum, if one uses current market interest rates in a risk premium analysis, speculation of whether investor expectations of future interest rates equal those from a forecasting service is unnecessary. *Id.*

There are numerous cases in which the Commission has expressed its preference for using current observable Treasury bond yields to estimate the risk-free rate because it is impossible to accurately predict future interest rates. *See, e.g., Liberty Utilities (Midstates Natural Gas) Corp.*, Docket No. 14-0371, Order at 66 (Feb. 11, 2015); *N. Shore Gas Co. / The Peoples Gas Light and Coke Co.*, Docket Nos. 14-0224/14-0225 (Cons.), Order at 133 (Jan. 21, 2015); *Ill.-Am. Water Co.*, Docket No. 11-0676, Order at 108-109 (Jul. 31, 2012); *Ill.-Am. Water Co.*, Docket No. 09-0319, Order at 112 (Apr. 13, 2010); *Cent. Ill. Light Co. d/b/a AmerenCILCO, Central Ill. Pub. Svc. Co. d/b/a AmerenCIPS, Ill. Power Co. d/b/a AmerenIP*, Docket Nos. 09-0306 through 09-0311 (Cons.), Order at 214 (Apr. 29, 2010); *Cent. Ill. Light Co.*, Docket No. 02-0837, Order 37 (Oct. 17, 2003); *Central Ill. Pub. Svc. Co. and Union Electric Co.*, Docket Nos. 02-0798/03-0008/03-0009 (Cons.), Order at 85 (Oct. 22, 2003); and *Commonwealth Edison Co.*, Docket No. 94-0065, Order at 93 (Jan. 9, 1995).

Market Risk Premium

Staff states that two of the four estimates of the market risk premium used in the Company's CAPM analyses are derived from performing DCF analysis on all the companies in the S&P 500 with long-term growth rates available, including non-dividend-paying companies. Ameren Ex. 9.3; Ameren Ex. 9.6. The Company's argument ignores that the market return calculation is derived using DCF analysis, which is a dividend discount model that assumes dividends will grow at a constant rate and the market value of common stock equals the sum of the discounted value of each dividend. Staff Ex. 4.0 at 3-5. As Mr. D'Ascendis points out, the DCF model expresses the ROE as the sum of the expected dividend yield and long-term growth rate. Ameren Ex. 4.0 at 43. As Ms. Phipps points out, dividend growth rates of non-dividend paying companies cannot be both constant and equal to the earnings growth rate as the Company's estimation process assumes. Staff Ex. 4.0 at 41. If the dividend growth rate of non-dividend-paying companies is constant, it must remain at 0%. In contrast, the average dividend growth

rates of the non-dividend paying companies in Mr. D'Ascendis' analyses equal approximately 22%. *Id.* Mr. D'Ascendis' inclusion of the non-dividend paying companies in a constant growth DCF analysis upwardly biases his estimate of market return.

Finally, Ms. Phipps demonstrated how the objectionable inputs to the Company's CAPM analyses overstate the investor-required ROE. Substituting the actual, observable, 30-year U.S. Treasury bond yield of 1.99% on January 31, 2020, for the Company's estimates of the risk-free rate of return, and averaging the Value Line beta estimate with a monthly beta estimate, would cause the Company's CAPM-derived ROE estimates to fall from 10.22% (Bloomberg data, excluding non-dividend paying companies) and 10.94% (Value Line data, excluding non-dividend paying companies) to 8.29% and 9.10%, respectively. Staff Ex. 4.0 at 41.

Summary of Problematic CAPM Inputs

Staff states that the Company's CAPM suffers the same infirmities as CAPM analyses the Company has sponsored in prior rate cases. In Docket Nos. 11-0282 and 13-0192, the Commission rejected the Company's CAPM analyses and expressed its preference for CAPM analyses that use betas measured over five years and that exclude non-dividend-paying companies from the market return calculation. *Ameren Ill. Co. d/b/a Ameren Ill.*, Docket No. 13-0192, Order at 164-65 (Dec. 18, 2013); *Ameren Ill. Co. d/b/a Ameren Ill.*, Docket No. 11-0282, Order at 123-25 (Jan. 10, 2012). This was articulated by the Appellate Court decision that affirmed the Commission's decision to reject the Company's CAPM analyses in Docket No. 13-0192. The Appellate Court Order states, "In summary, then, the Commission regarded Ameren's CAPM analysis as suffering from two flaws: (1) the use of short measuring periods for the beta and (2) the inclusion of non-dividend paying companies in the constant growth DCF analysis that Ameren used to calculate the market return in the CAPM." Docket Nos. 4-14-0173, 4-14-0182 (Cons.), 2015 IL App (4th) 140173, 15, 45 (Jun. 2, 2015). In summary, Staff recommends the Commission reject the Company's CAPM analyses once again due to the Company's reliance on problematic proxies for beta and the risk-free rate of return, which introduce unnecessary measurement error into the Company's ROE estimates, as well as the Company's improper market return calculation, which was derived by applying a dividend discount model to non-dividend-paying companies.

AIC's ECAPM

In addition to suffering the same infirmities as the Company's CAPM analyses – namely, exclusive reliance on weekly betas, betas measured over two years (versus five years), using forecasted Treasury yields as a proxy for the risk-free rate of return, and market return calculations that are derived by performing DCF analysis on non-dividend paying companies, the Company's ECAPM employs adjusted betas published by Value Line and Bloomberg. Staff Ex. 4.0 at 42. According to Litzenberger, a properly applied ECAPM analysis requires using unadjusted betas ("raw betas"). *Id.*

The Company's ECAPM ostensibly attempts to adjust the CAPM for the fitness of the empirically measured security market line ("SML") relative to the predicted SML. The same Value Line and Bloomberg adjusted betas are used in the Company's traditional CAPM and ECAPM analyses. See Ameren Ex. 9.8. However, a study by Litzenberger suggests that use of adjusted betas is a solution to the discrepancy between the

theoretically predicted and empirically observed relationship between risk and return. Staff Ex. 4.0 at 42. In other words, by using adjusted betas in his traditional CAPM, the AIC witness has already transformed his traditional CAPM into an ECAPM. By using adjusted betas in the ECAPM model, he effectively adjusts twice for the flatness of the empirical SML and, thus, inflates the return estimate derived from his ECAPM. Hence, the Commission should reject the Company's ECAPM results.

In testimony, Ms. Phipps showed how using adjusted betas in the Company's ECAPM analysis inflates the ROE estimate. Ms. Phipps demonstrated that using adjusted betas in the ECAPM as the AIC witness did is a double adjustment that overcompensates for the observed flatness of the security market line and, therefore, leads to an overstated estimate of the cost of common equity whenever the raw beta is less than one, since the weight of the raw beta is being reduced in favor of the market beta of 1.0.

The Commission has rejected the use of the ECAPM to determine the cost of common equity in several prior proceedings. *See, e.g., Consumers III. Water Co.*, Docket No. 03-0403, Order at 41-42 (Apr. 13, 2004); *MidAmerican Energy Co.*, Docket No. 01-0696, Order at 22 (Sep. 11, 2002); *MidAmerican Energy Co.*, Docket No. 01-0444, Order at 14-17 (Mar. 27, 2002). The Order in Docket No. 11-0767 states:

The Commission cannot recall a proceeding in which it relied upon the ECAPM in establishing the cost of common equity for a utility. In the instant proceeding, the record supports a finding that use of adjusted betas in the ECAPM is inappropriate. As Staff witness Ms. Freetly explained, by using adjusted betas she already effectively transformed her Traditional CAPM into an ECAPM. Therefore, including an additional beta adjustment in the ECAPM model would result in inflated estimates of the samples' cost of common equity.

Docket No. 11-0767, Order at 109.

Ms. Phipps explained that if the inputs to the CAPM were corrected by using the current 30-year U.S. Treasury bond yield of 1.99% on January 31, 2020 (the date of the Company's ROE analysis) instead of the Company's projected Treasury yields in combination with an average of raw weekly and monthly beta estimates, the Company's ECAPM estimates would range from 7.69% to 8.42% (instead of 11.13% to 11.94%). Staff Ex. 4.0 at 44-45. Therefore, Staff recommends the Commission reject the Company's ECAPM results.

Bond Yield Plus Risk Premium Model

The Company's bond yield plus RPM results in three ROE estimates ranging from 9.87% to 9.93%, which were derived by performing a regression analysis in which the observed equity risk premium represents the historical spread between authorized returns for gas distribution companies and U.S. Treasury bond yields over the 1980-2020 measurement period. Ameren Ex. 9.0 at 62-64; *see also* Ameren Ex. 9.9. The Company then adds the resulting equity risk premium to the same forecasted Treasury bond yields

that Mr. D'Ascendis uses in his CAPM and ECAPM analyses – i.e., the 2.25%, 2.42%, and 3.45% - which are flawed for the reasons set forth previously herein.

Ms. Phipps contends that the Company's RPM analysis uses an arbitrary measurement period. Staff Ex. 4.0 at 45-46. Moreover, using historical rate case data from forty years ago wrongly implies that market risk premiums revert to a mean that is observable. *Id.* This implication runs counter to the fact that security returns approximate a random walk, rendering the selection of any measurement period necessarily arbitrary. *Id.*

In addition, there is no basis for assuming that the rate cases relied upon in the Company's RPM analysis are reasonable proxies for estimating the ROE for AIC in the context of a fully litigated proceeding that will set rates for the Company's gas distribution operations. *Id.* at 46. Furthermore, returns authorized by regulatory bodies are not necessarily market-based investor required returns, but rather are legal determinations. For example, authorized rates of return could include performance bonuses or penalties. Thus, it cannot be assumed, as the Company's RPM analysis assumes, that those authorized returns were representative of the concurrent investor-required return. *Id.*

Furthermore, the Company's testimony fails to specify critical factors that influenced the allowed returns that form the basis of that analysis. For instance, Mr. D'Ascendis does not identify the relative risk, as exemplified by credit rating or any other metric, of each utility involved in those rate of return decisions. *Id.* Without such data, any evaluation of the rate of return recommendations in this proceeding via comparison to the authorized returns reflected in his analysis is not useful since we have no basis on which to assess comparability. Nonetheless, based on the limited information that is available, the average allowed common equity ratio in the rate cases relied upon by Mr. D'Ascendis (where such data is provided) is 47%. *Id.* at 46-47. This is a much lower common equity ratio than the 54% common equity ratio that AIC requests in the instant case. *Id.* at 47. All else equal, a 47% common equity ratio denotes more financial risk than the Company's proposed 54% common equity ratio. *Id.* On this basis, the RPM would appear to overestimate the ROE that would be appropriate for AIC given its lower degree of financial risk. *Id.*

Notably, the Commission has rejected the Company's RPM analyses in (at least) the past several AIC gas rate cases. The Commission's Order in Docket Nos. 09-0306 et al. states:

[T]he Commission notes it has traditionally rejected risk premium analyses. The Commission finds no reason to deviate from past practice wherein it has relied on the DCF and CAPM models to estimate the cost of equity. The Commission declines to consider either of AIU's or IIEC's risk premium analyses.

Cent. Ill. Light Co., Docket Nos. 09-0306-09-0311 (Cons.), Order 216. Similarly, in Docket No. 11-0282, the Commission's Order rejected AIC's RPM stating:

Mr. Hevert also performed a Treasury yield plus risk premium analysis. For this analysis, Mr. Hevert performed a regression

analysis on his risk premium (authorized returns on equity less 30-year Treasury yields) and 30-year Treasury yields, using data from 1992 through 2010. Among the many problems the Commission finds with this approach is its reliance on utility authorized returns on equity throughout the US. Additionally, there is the concern about the heavy reliance on historical data and the difficulty in determining an appropriate historical period to rely upon. In summary, the Commission continues to question the validity of the bond yield plus risk premium approach. The Commission finds that for the purpose of this proceeding, Mr. Hevert's analysis should not be relied upon.

Docket No. 11-0282, Order at 125. In AIC's subsequent gas rate case, Docket No. 13-0192, the Commission again concluded that Mr. Hevert's bond yield plus RPM should not be relied upon. Docket No. 13-0192, Order at 165. In this case, the Company's RPM suffers from the same infirmities as his bond yield plus RPMs that the Commission rejected in Docket Nos. 11-0282 and 13-0192. Specifically, in those cases and in the instant case, AIC's bond yield plus risk premium approach relies on utility authorized returns on equity throughout the U.S. and historical data. Staff Ex. 4.0 at 47. In this instance, the Company's regression analysis uses a 1980 – 2020 measurement period, which is problematic because measuring equity risk premiums over forty years implies the risk of utilities has not changed during that time, which contradicts the Company's rationale for using betas measured over two years (or less) in the CAPM analyses.

Finally, Mr. Hevert's flawed model predicts that the cost of common equity is inversely related to the 30-year U.S. Treasury bond yield when the U.S. Treasury bond yield is 2.46% or lower. *Id.* at 48. That is, his model predicts that as the U.S. Treasury bond yield falls further below 2.46%, the cost of common equity for utilities will rise. In fact, on the date of Mr. Hevert's ROE analysis, January 31, 2020, the 30-year U.S. Treasury bond yield was 1.99%. Using that Treasury bond yield in Mr. Hevert's bond yield plus risk premium analysis would result in a ROE estimate of 9.97%, which exceeds the ROE estimates that he derived using Treasury bond yields ranging from 2.25% to 3.45%. *Id.*

The Commission has rejected the use of RPMs to determine the cost of common equity in several prior proceedings. See, e.g., *MidAmerican Energy Co.*, Docket No. 14-0066, 48-49 (Nov. 6, 2014); *Ameren Ill. Co.*, Docket No. 13-0192, Order at 165 (Dec. 18, 2013); *Ameren Ill. Co.*, Docket No. 11-0282, Order 125 (Jan. 10, 2012); Docket No. 11-0767, Order at 110; *Aqua Ill. Co.*, Docket No. 14-0419, Order 46-47 (Mar. 25, 2015); *Aqua Ill. Co.*, Docket No. 11-0436, Order 38 (Feb. 16, 2012); *N. Shore Gas Co. and The Peoples Gas Light and Coke Co.*, Docket Nos. 12-0511/12-0512 (Cons.), Order at 207 (Jun. 18, 2013); *N. Shore Gas Co. and The People's Gas Light and Coke Co.*, Docket Nos. 09-0166/09-0167 (Cons.), Order at 128 (Jan. 21, 2010); *N. Shore Gas Co. / The Peoples Gas Light and Coke Co.*, Docket Nos. 07-0241/07-0242 (Cons.), Order at 93-94 (Feb. 5, 2008). Staff concurs with the Commission's view of the RPM and recommends the Commission reject this analysis once again in this case due to the high degree of subjectivity introduced by the RPM's heavy reliance on historical data and rate decisions

from other regulatory jurisdictions. Staff recommends the Commission reject the Company's Bond Yield RPM results.

Expected Earnings Approach

The Company relies on an expected earnings analysis to corroborate the results of the other methodologies used by AIC to estimate its ROE. Ameren Ex. 9.0 at 65; see *also* Ameren Ex. 9.10. Using expected earnings analysis to estimate a forward-looking investor-required ROE for AIC's gas operations is problematic because it relies on book returns, which do not reflect investors' requirements. Staff Ex. 4.0 at 50. Ms. Phipps explained that it is incorrect to equate a firm's expected book returns with the return investors require on their investment in a firm's stock because the former is a measure of a firm's book profitability, whereas the latter reflects the firm's cost of equity. *Id.* In other words, a firm's book return is based on accounting earnings and does not reflect the cash flows expected and valued by investors. *Id.* Since book returns do not incorporate investor valuations (i.e. market pricing), they cannot capture the investor-required rate of return. *Id.* Thus, the expected book returns are inappropriate for estimating the returns required by investors.

The Company's expected earnings analysis estimates AIC's cost of common equity using Value Line's projected Return on Common Equity for the 2022-2024 time period. Ameren Ex. 9.0 at 65. The Value Line projections are 3- to 5-year projections based on a proprietary mathematical model developed by Value Line statisticians. *Id.* Ms. Phipps explained that Value Line's "black box" methodology for developing 3- to 5-year returns on book equity is not a reliable substitute for a market-based approach to estimating return on common equity, such as DCF or CAPM analyses. *Id.* Value Line estimates expected earned return on common equity partially based on allowed returns and Mr. D'Ascendis, in turn, uses the expected returns to develop a recommended allowed ROE. *Id.* This is how the expected earnings approach introduces circularity into the Company's analysis. This is the reason the Commission has previously rejected the use of accounting-based ROE analyses, such as expected earnings analysis, in determining the allowed ROE. See, e.g., Docket No. 10-0467, Order at 124, 152. This is the same reason the Company's expected earnings analysis should not be given weight in this case. For the foregoing reasons, Staff recommends the Commission reject the Company's Expected Earnings Analysis results.

c) IIEC/CUB/FEA's Position

Consistent with the Commission's historical practice, IIEC/CUB/FEA witness Walters used several models based on financial theory to estimate AIC's cost of common equity. Those models are: (1) a Constant Growth DCF model, using the consensus of analysts' growth rate projections; (2) a Multi-Stage DCF model; (3) a RPM; and (4) a CAPM. Mr. Walters applied these models to a group of publicly traded utilities with investment risks similar to AIC, referred to as the "Proxy Group". IIEC/CUB/FEA Ex. 2.0 at 20.

Utility Proxy Group

The Proxy Group utilized by Mr. Walters is the same Proxy Group relied upon by AIC's cost of equity witnesses. IIEC/CUB/FEA Ex. 2.0 at 24. The Proxy Group (identified

in IIEC/CUB/FEA Ex. 2.3), has an average corporate rating from Moody's of A3, which is identical to AIC's rating from Moody's and an average corporate rating from S&P of A-, which is one notch above AIC's rating of BBB+. *Id.* at 24.

The Proxy Group, as reported in S&P Global Market Intelligence ("MI"), has an average and median common equity ratio (including short term debt) of 46.7%. As also reported in Value Line the Proxy Group has an average and median common equity ratio (excluding short-term debt) of 53.4% and 52% respectively. *Id.* at 24-25.

IIEC/CUB/FEA note in sum, AIC's investment risk is relatively represented by the Proxy Group when taking into consideration the 50% common equity ratio recommended by IIEC/CUB/FEA. Furthermore, IIEC/CUB/FEA advocate, should the Commission adopt AIC's requested common equity ratio, a ROE in the lower half of Mr. Walters' recommended cost of equity range of 9.0% to 9.3% is warranted. *Id.* at 25, 56.

Discounted Cash Flow Models

IIEC/CUB/FEA witness Walters used several versions of the DCF model in his analysis of the cost of equity for AIC. The DCF model posits that the stock price is valued by summing the present value of expected future cash flows discounted at the investor's required rate of return or cost of capital. The DCF model requires a current stock price, expected dividend, and expected growth rate in dividends as described in full in Mr. Walters' testimony. IIEC/CUB/FEA Ex. 2.0 at 25-26.

IIEC/CUB/FEA witness Walters included a quarterly compounding adjustment to his DCF return estimate based on his understanding that it is the Commission's preference to use the quarterly compounding form of the Constant Growth DCF model. *Id.* at 26.

Constant Growth DCF Model

For the current stock price in the Constant Growth DCF model analyses, IIEC/CUB/FEA witness Walters used the average of the weekly high and low stock prices for the proxy group over a 13-week period and 26-week period ending May 15, 2020. Mr. Walters did so because an average stock price is less susceptible to market price variations than a price at a single point in time. IIEC/CUB/FEA Ex. 2.0 at 26. Mr. Walters used the most recently paid quarterly dividend reported in the Value Line Investment Survey of February 28, 2020 for the expected dividend.

IIEC/CUB/FEA note, for the expected growth rate in dividends, in his Constant Growth DCF analysis, Mr. Walters relied on a consensus, or mean, of professional securities analysts' earnings growth estimates as a proxy for dividend growth expectations. Mr. Walters used the average of three sources of analysts' growth rate estimates, Zacks, MI, and Yahoo! Finance. The growth rate estimates he used are shown in IIEC/CUB/FEA Exhibit 2.4. The average rate for Mr. Walter's Proxy Group was 6.24%. *Id.* at 28.

The results of Mr. Walters' average and median Constant Growth DCF returns for his Proxy Group for the 13-week analysis were 9.69% and 9.39% respectively. For the 26-week analysis, the average and median Constant Growth DCF returns were 9.45% and 9.28% respectively. Mr. Walters explained that the results of his Constant Growth DCF analyses were heavily impacted by the return estimates for South Jersey Industries

of 14.79% and 14.7% for the 13-week and 26-week periods, respectively. IIEC/CUB/FEA assert this is made apparent by the fact that the average DCF results for both periods are much higher than the median DCF estimates, indicating an average that is heavily influenced by a high-end outlier. Under such circumstances, Mr. Walters explained the median is the preferred method of measuring the central tendency because it limits the effects of outliers, whether they are high or low. *Id.* at 28-29.

Multi-Stage DCF Model

IIEC/CUB/FEA witness Walters performed a Multi-Stage DCF analysis to reflect the outlook of changing growth expectations. IIEC/CUB/FEA Ex. 2.0 at 30. Mr. Walters explained that the Constant Growth DCF model is based on analyst growth rate projections. Therefore, Mr. Walters concludes it is a reasonable reflection of rational investment expectations over the next three to five years. However, IIEC/CUB/FEA note the Constant Growth model cannot reflect a rational expectation that a period of high or low short-term growth can be followed by a change in growth to a rate that is more reflective of long-term sustainable growth. Thus, Mr. Walters performed a Multi-Stage DCF analysis as indicated above.

IIEC/CUB/FEA assert the Multi-Stage DCF model reflects the possibility of non-constant growth for a company over time. It reflects three growth periods: (1) a short-term period consisting of the first five years; (2) a transition period, consisting of the next five years (years 6 through 10); and (3) a long-term growth period starting in year 11 and extending into perpetuity. *Id.* at 31.

For the short-term growth period, Mr. Walters relied on the consensus of analysts' growth projections used in his Constant Growth DCF model. For the transition period, growth rates were reduced or increased by an equal factor reflecting the difference between the analysts' growth rates and the long-term sustainable growth rate. For the long-term period, Mr. Walters assumed each company's growth would converge to the maximum sustainable long-term growth rate. *Id.* at 32.

Mr. Walters developed his long-term sustainable growth rate based on the consensus of long-term GDP growth rate projections by independent economists. He observed that the Blue Chip publishes the consensus for GDP growth projections twice a year. Mr. Walters observed that these projections reflect current outlooks for GDP and are likely to have an influence on investor expectations of future growth outlooks. Mr. Walters also considered other sources of projected long-term GDP growth. These other sources included EIA-Annual Earnings Outlook, Congressional Budget Office, Moody's Analytics, Social Security Administration, and the Economist Intelligence Unit. *Id.* at 35-37. IIEC/CUB/FEA point out the nominal GDP growth and the real GDP growth projections made by these sources supported the use of the consensus for 5-year and 10-year projected GDP growth outlooks as a reasonable estimate of market participants' long-term GDP growth. *Id.* at 37.

IIEC/CUB/FEA note, for the stock price, dividend, and growth rates in his Multi-Stage DCF analysis, Mr. Walters relied on the same 13-week average stock prices and most recent quarterly dividend payment data referenced in his constant growth DCF analysis. *Id.* at 37. For the first stage of his Multi-Stage DCF analysis, he used the same consensus of analysts' growth rate projections he used in his Constant Growth DCF

model. For the second stage (transition stage), he transitioned the growth rate from the first stage to the third stage using a straight linear trend. For the third stage of his Multi-Stage DCF analysis, he transitions the growth rate from the first stage to the third stage using a straight linear trend. For this third stage the long-term sustainable growth stage is 4% and is based on the consensus of economists' long-term projected nominal GDP growth rate. *Id.* at 37-38.

Under the IIEC/CUB/FEA Multi-Stage DCF Model, the average and median DCF returns on equity for the proxy group, using the 13-week average stock price, are 7.93% and 7.70% respectively. The average and median DCF ROEs for the Proxy Group, using the 26-week average stock price, are 7.66% and 7.51% respectively. *Id.* at 38; IIEC/CUB/FEA Ex. 2.7.

RPM

Mr. Walters used a Bond Yield plus RPM to estimate AIC's cost of equity. This model is based on the principle that investors require a higher return to assume greater risk. IIEC/CUB/FEA note generally, common equity investments are riskier than investments in bonds because bonds have more security of payment in case of bankruptcy than common equity and coupon payments on bonds represent contractual obligations. IIEC/CUB/FEA point out that companies are not required to pay dividends or guarantee returns on equity investments. IIEC/CUB/FEA Ex. 2.0 at 39.

Mr. Walters' RPM was based on two estimates of equity risk premium. The first estimate is based on and quantified as the difference between regulatory commission authorized returns on equity and U.S. Treasury Bond yields. That difference is the risk premium. The second estimate is based on and quantified as the difference between authorized returns on equity and contemporary "A" rated utility bond yields by Moody's for the period 1986-2019. IIEC/CUB/FEA Ex. 2.0 at 39.

Mr. Walters estimated the first equity risk premium by measuring the average authorized ROE for gas utilities over prevailing Treasury Bonds and utility bonds since 1986. *Id.* at 39; IIEC/CUB/FEA Exs. 2.9 and 2.10. Based on his analysis, Mr. Walters established that the average indicated risk premium over U.S. Treasury Bond yields has been 5.55%. *Id.* at 40; IIEC/CUB/FEA Ex. 2.9, col. 3, ln. 36. Mr. Walters calculated the equity risk premium over contemporary "A" rated Moody utility bond yield was 4.19%.

Based on his analysis of the information in IIEC/CUB/FEA Exs. 2.9 and 2.10, and because of the current low interest rates and uncertainty revolving around forecasted interest rates, Mr. Walters recommended that more weight be given to the high-end risk premium estimates than the low-end in order to be conservative. Therefore, Mr. Walters recommended that the most recent 5-year average risk premiums be used in determining a fair ROE for AIC. The most recent 5-year risk premium over Treasury yields is 6.97%. IIEC/CUB/FEA Ex. 2.9. A risk premium of 6.97% exceeds the 35-year average of 5.5% by 1.42%. *Id.*

Based on the information discussed above, and because of current low interest rates and uncertainty revolving around forecasted interest rates, Mr. Walters recommended that in the context of his RPM, more weight be given to the high-end risk premium estimates than the low-end risk premium estimates in order to be conservative.

Mr. Walters recommended the most recent 5-year average risk premiums be used in determining a fair ROE for AIC. IIEC/CUB/FEA point out, the most recent 5-year average risk premium over Treasury yields is 6.97% which exceeds the 35-year average of 5.55% by 1.42 percentage points. IIEC/CUB/FEA Ex. 2.0 at 43; IIEC/CUB/FEA Ex. 2.9. Similarly, IIEC/CUB/FEA point out the most recent 5-year allowed risk premium over utility bonds is 5.73%. This is well above the 35-year historical average risk premium of 4.19%. IIEC/CUB/FEA Ex. 2.0 at 43; IIEC/CUB/FEA Ex. 2.10.

Under Mr. Walters' risk premium analysis, adding the 6.97% risk premium to the projected Treasury yield of 1.8% produces a ROE of 8.8%, adding the 5.73% risk premium to the "A" rated utility bond yield of 3.27% and 3.29% produce an estimated cost of equity of approximately 9%. Similarly, the Baa-rated utility bond yields have averaged 3.77% and 3.70% over the same 13-week and 26-week periods. IIEC/CUB/FEA maintain, adding the 5.73% premium to the average Baa-rated utility bond yields of 3.77% and 3.70% produce an estimated cost of equity of 9.4% to 9.5%. IIEC/CUB/FEA confirm the estimated cost of equity using risk premium over utility bond yields is in the range of 9.0% to 9.5%. IIEC/CUB/FEA Ex. 2.0 at 44. Based on his risk premium analysis, Mr. Walters concluded that a reasonable ROE for AIC is 9.3%. The summary of Mr. Walters' risk premium results is shown in Table 8 of his direct testimony. *Id.* at 45.

CAPM

IIEC/CUB/FEA note the CAPM method of analysis is based upon the theory that the market required rate of return for a security is equal to the risk-free rate, plus a risk premium associated with the specific security. IIEC/CUB/FEA Ex. 2.0 at 45. The CAPM theory suggests that the market will not compensate investors for assuming risks that can be diversified away. Therefore, IIEC/CUB/FEA point out the only risk that investors will be compensated for is systematic or non-diversifiable risks. IIEC/CUB/FEA note the beta is a measure of the systematic or non-diversifiable risks. IIEC/CUB/FEA Ex. 2.0 at 46. IIEC/CUB/FEA also note the CAPM requires an estimate of the risk-free rate, the Company's beta, and a market risk premium. *Id.* at 46.

IIEC/CUB/FEA point out that for the risk-free rate, Mr. Walters used Blue Chip's projected 30-year Treasury bond yield of 1.8, for his CAPM analysis, because long-term Treasury bonds are considered to have negligible credit risk. IIEC/CUB/FEA Ex. 2.0 at 46-47.

For the beta, Mr. Walters used the average and median proxy group beta from Value Line of 0.63 and 0.60. IIEC/CUB/FEA Ex. 2.0 at 47.

For his market risk premium estimate, Mr. Walters developed three market risk premium estimates. IIEC/CUB/FEA allow these included an estimate using a risk premium estimate based on the historical real return and projected inflation, as well as two forward-looking estimates based on the DCF methodology. *Id.* at 48.

IIEC/CUB/FEA note, the market risk premium estimate was derived by estimating the expected return on the market (as represented by the S&P 500) and subtracting the risk-free rate from this estimate. IIEC/CUB/FEA witness Walters estimated the expected market return to be 11.1%. The market risk premium is the difference between the 11.1%

market return and the projected risk-free rate of 1.8% or 9.3%. IIEC/CUB/FEA Ex. 2.0 at 48.

IIEC/CUB/FEA note, Mr. Walters also derived market risk premium estimates using the DCF methodology. Mr. Walters used two different versions of the DCF methodology to develop estimates of the market risk premium. First, Mr. Walters employed the constant growth DCF model in the traditional sense by adding a projected 3- to 5-year growth rate to a projected dividend yield. Mr. Walters second DCF-based market risk premium estimate was derived by estimating the expected return using FERC's two-step DCF methodology. *Id.* at 49-50. Using the constant growth DCF model, Mr. Walters produced a market risk premium estimate of 10.5%. Using the second version, he produced a market risk premium of 9.2%. *Id.* at 50.

Mr. Walters employed the two-step method because the constant growth model assumes the input growth rate to be a growth rate in perpetuity. Mr. Walters explains that no company, regulated or not, can grow at a higher rate than the economy in perpetuity. *Id.* at 50. Furthermore, IIEC/CUB/FEA point out, actual earnings estimates for the underlying holdings are used to calculate a mean 3- to 5-year earnings growth rate estimate for the index, and individual growth rates for underlying holdings must be taken into consideration in evaluating the reasonableness of the sustainability of growth rate for the index as a whole. Mr. Walters pointed out as an example, that S&P 500 company Baker Hughes has a projected growth rate of 45.5%, which is approximately 11.4 times higher than the customer consensus expected growth rate of 4.0% for the U.S. economy. Mr. Walters concludes that for those reasons, employing the two-step DCF based on a blended growth rate gives some weight to projected GDP growth and is a reasonable approach.

IIEC/CUB/FEA witness Walters also observed that his forward-looking estimates of market risk premium of 9.3%, 9.2% and 10.5% exceed the historical market risk premium of 6.0%. *Id.* at 51.

Mr. Walters also compared his market risk premiums to risk premiums estimated by Duff & Phelps noting Duff & Phelps indicates a market risk premium falls somewhere in the range of 5.50% to 6.91%. Mr. Walters' risk premium estimates are in the range of 9.2% to 10.5%, substantially above the historical and normalized market risk premiums recommended by Duff & Phelps. IIEC/CUB/FEA note, this is in part because Duff & Phelps' market risk premiums are measured over a 20-year Treasury bond, and Mr. Walters relied on a projected 30-year Treasury bond yield in determining his market risk premium. As a result, Mr. Walters opined that his CAPM analysis should be considered conservative estimates for the cost of equity. *Id.* at 52-54.

In summary in his CAPM analysis, Mr. Walters relied on beta estimates for his CAPM analysis published by Value Line. He relied on the projected 30-year Treasury yield of 1.8% as an estimate for his risk-free rate. Mr. Walters developed his market risk premium relying on three different estimates on expected market return.

As shown in IIEC/CUB/FEA Ex. 2.14, Mr. Walters provided the results of six different applications of the CAPM. The first three results are based on the Proxy Group's current average beta of 0.63, a projected risk-free rate of 1.8%, and Mr. Walters' three market risk premium estimates of 9.3%, 9.2%, and 10.5%. IIEC/CUB/FEA note the

results of the CAPM based on these inputs range from 7.6% to 8.4%. *Id.* at 54. The last three results presented by Mr. Walters are based on the Proxy Group's historical beta of 0.73%, a projected risk-free rate of 1.8%, and Mr. Walters' three market risk premium estimates of 9.3%, 9.2% and 10.5%. The results of the CAPM based on these inputs range from 8.5% to 9.4%. Mr. Walters' results are summarized in Table 10 of his direct testimony. *Id.* at 55.

Mr. Walters concludes that a reasonable CAPM ROE estimate is 9.0%. IIEC/CUB/FEA Ex. 2.0 at 55.

Recommended ROE

IIEC/CUB/FEA witness Walters conducted a DCF analysis, a Risk Premium analysis, and a CAPM analysis to determine AIC's cost of common equity. Mr. Walters' DCF estimate is 9.0%, his Risk Premium estimate is 9.3% and his CAPM estimate is 9.0%. Based on these analyses, Mr. Walters estimates AIC's current market cost of equity be in the range of 9.0% to 9.3%, with a midpoint estimate of 9.15% rounded to 9.2%. IIEC/CUB/FEA Ex. 2.0 at 55-56. Thus, IIEC/CUB/FEA recommend AIC be awarded a return on common equity of 9.2%.

IIEC/CUB/FEA stress the recommended overall rate of return and ROE of 9.2% will support an investment grade bond rating for AIC. IIEC/CUB/FEA witness Walters reached this conclusion by comparing the key credit rating financial ratios for AIC at his proposed ROE and capital structure, to S&P's benchmark financial ratios using S&P's credit metric ranges. IIEC/CUB/FEA Ex. 2.0 at 57. Mr. Walters described the S&P credit methodology and its use of financial benchmark ratios in his direct testimony. *Id.* at 57-58.

IIEC/CUB/FEA note, S&P publishes ranges for primary financial ratios that it uses as guidance in its credit review for utility companies. IIEC/CUB/FEA further note, the two core financial ratio benchmarks it relies on in its credit rating process include: (1) Debt to Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA"); and (2) FFO to Total Debt. *Id.* at 58. Mr. Walters applied these ratios to test the reasonableness of the IIEC/CUB/FEA ROE of 9.2%. *Id.* at 59. IIEC/CUB/FEA emphasize, based on an equity return of 9.2% and a 50% common equity ratio, AIC will be provided an opportunity to produce a debt to EBITDA multiple of 3.9x. IIEC/CUB/FEA note this is slightly below the midpoint of S&P's "Significant" guideline range of 3.5x to 4.5x and supports a credit rating of A-. IIEC/CUB/FEA also note, AIC's gas distribution operations FFO to total debt ratio, at a 9.2% equity return, is 21% which is at the high end of "Significant" metric guideline range of 13% to 23%. IIEC/CUB/FEA confirm all these ratios support an investment grade bond rating of A-. *Id.* at 60.

In conclusion, at the IIEC/CUB/FEA recommended ROE of 9.2%, and proposed capital structure with 50% common equity, AIC's financial credit metrics are supportive of an investment grade bond rating of A- (AIC's current bond rating is BBB+) ensuring the Company's financial integrity.

AIC Common Equity Analysis

IIEC/CUB/FEA point out AIC is requesting a ROE of 10.5% based on a recommended range of 10% to 11.0%. See AIC Ex. 9.0 at 2; AIC Ex. 35.0 at 2.

IIEC/CUB/FEA argue the recommended ROE of 10.50% proposed by AIC witnesses is over-stated and unreasonable. IIEC/CUB/FEA importantly note that not a single natural gas utility in the United States has been awarded a 10.50% return on common equity since 2018, and AIC witnesses have agreed that this is the case. See IIEC/CUB/FEA Ex. 2.0 at 61; IIEC/CUB/FEA Ex. 2.16.

IIEC/CUB/FEA assert, AIC's recommended ROE of 10.5% does not compare favorably to the ROEs being awarded to electric utilities. IIEC/CUB/FEA confirm the average authorized ROE for electric utilities for the first quarter of 2020 was 9.45%, or 105 basis points less than AIC's recommendation for its gas distribution operations. IIEC/CUB/FEA importantly note, vertically integrated electric utilities have not had an average authorized ROE of 10.50% or higher since 2009, more than ten years ago. IIEC/CUB/FEA confirm AIC witnesses acknowledged as much. See IIEC/CUB/FEA Ex. 2.17. In sum, IIEC/CUB/FEA emphasize AIC's proposed 10.50% return on common equity is well in excess of the current market cost of equity for regulated gas distribution companies in general, and AIC in particular.

IIEC/CUB/FEA assert there are several reasons AIC's ROE analyses produced excessive results:

1. Its multi-stage DCF results rely on growth rates that are unsustainable and, therefore, unreasonable.
2. The CAPM is based on inflated expected market returns and market risk premiums.
3. Application of the ECAPM is incorrectly calculated using an adjusted beta.
4. The bond yield risk premium studies were based on inflated utility equity risk premiums.
5. Consideration of flotation costs are inconsistent with prior Commission Orders and policy.

IIEC/CUB/FEA Ex. 2.0 at 62.

AIC Multi-Stage DCF

IIEC/CUB/FEA note AIC ROE witnesses initially presented two versions of the multi-stage DCF model. In the first application, the multi-stage growth DCF models are based on consensus growth rates published by Zacks and First Call, and individual growth rate projections made by Value Line, as well as estimated growth rates using the retention growth method based on Value Line data. IIEC/CUB/FEA Ex. 2.0 at 64. IIEC/CUB/FEA also note Mr. D'Ascendis relied on dividend yields based on average stock prices for the 30-day period ending January 31, 2020. IIEC/CUB/FEA point out DCF estimates were presented by low, mean and high ROE results, which are based on the lowest, mean, and highest of all Mr. D'Ascendis' growth rate estimates respectively. *Id.* at 64-65.

IIEC/CUB/FEA maintain Mr. D'Ascendis' DCF analysis was impacted by various assumptions, all of which produce an inflated DCF return estimate. IIEC/CUB/FEA assert there are three principle problems with the DCF analysis. First IIEC/CUB/FEA note, the multi-stage DCF model is unreliable because it relied on a long-term GDP growth rate

that does not reflect the consensus of market participant outlooks for future GDP growth. *Id.* at 65. Second IIEC/CUB/FEA note, the multi-stage DCF results select assumptions and inputs made to manipulate dividend payout ratios and thus, cash flow projections during the transitional stage of the model. IIEC/CUB/FEA believe Mr. D'Ascendis' dividend payout assumption is flawed and inflates the dividend payments ultimately in the DCF result. Third IIEC/CUB/FEA note, the terminal value price/earnings ("P/E") ratio is arbitrarily based on a flawed assumption that the proxy group P/E ratio will not change as the growth rate outlook changes. *Id.*

With regard to the first problem, IIEC/CUB/FEA assert Mr. D'Ascendis' original long-term growth rate estimate of 5.23% was not reasonable because the methodology used to calculate the growth rate was not based on market participants' outlooks of future growth opportunities.

IIEC/CUB/FEA suggest the GDP growth projection made by Mr. D'Ascendis is not comparable to the consensus of independent analyst projections of future growth and, therefore, did not reasonably reflect investors outlook used to make investment decisions. *Id.* at 66. Furthermore, IIEC/CUB/FEA note the Commission has previously expressed concern with the use of Mr. D'Ascendis' terminal growth rate. IIEC/CUB/FEA point out that in Docket No. 13-0192, the Commission expressed over-use of the terminal GDP growth rate in the multi-stage growth DCF model presented by AIC witness Hevert in that case. Specifically, the Commission stated that it:

shares to a large degree the concerns expressed by Staff and IIEC witnesses that the growth rate used in by (sic) Mr. Hevert in the final stage of his multi-stage model is too high and would imply a return on new common equity investment that is implausible and unsustainable.

Docket No. 13-0192, Order at 163.

IIEC/CUB/FEA believe the Commission should have similar concerns in this case. IIEC/CUB/FEA note Mr. D'Ascendis' long-term GDP growth rate was calculated, in this case, in a fashion that is identical to the calculation in Docket 13-0192, where the Commission agreed it was too high and not sustainable. IIEC/CUB/FEA Ex. 2.0 at 69.

With regard to the second problem with the multi-stage DCF analysis, Mr. Walters explained how Mr. D'Ascendis' multi-stage DCF model over-stated dividend cash flows because of the long-term dividend payout ratio assumption that was made. IIEC/CUB/FEA pointed out that Mr. D'Ascendis modified analyst's current dividend payout projections of approximately 55.57% for the Proxy Group and assumed that it would converge to the historical average dividend payout ratio of 63.58%. *Id.* at 69. Mr. Walters explained why the assumption that the Proxy Group payout ratio would increase toward the industry historical average payout ratio was not reasonable and resulted in inflation of the DCF return estimate. *Id.* at 69-70.

IIEC/CUB/FEA point out, when Mr. D'Ascendis' multi-stage DCF analysis is revised to correct all three of the flaws identified by Mr. Walters, it produces a multi-stage DCF return estimate of 7.45%. Furthermore, while Mr. Walters disagreed with Mr. D'Ascendis' terminal P/E assumption, leaving it intact while correcting the GDP growth

rate and payout ratio assumptions produces a multi-stage growth DCF estimate of 10.04%. IIEC/CUB/FEA note the midpoint of the corrected DCF range of 7.45% to 10.04% is 8.75%. *Id.* at 72; IIEC/CUB/FEA Ex. 2.18.

AIC CAPM Analysis

IIEC/CUB/FEA assert AIC witness D'Ascendis' analyses had two primary problems or flaws. First, IIEC/CUB/FEA note, the market risk premiums used in all the CAPM studies are overstated because they do not reflect a reasonable estimate of the expected return on the market while relying on unsustainable growth rates. Second, IIEC/CUB/FEA point out, there is a mismatch in the market risk premiums used in the CAPM analyses that are based on a projected risk-free rate. AIC does not measure the market risk premium in relation to the projected risk-free rate. AIC's market rate premium estimates are based on current risk-free rate of 2.25%.

IIEC/CUB/FEA note Mr. D'Ascendis calculated two sets of risk premiums for his CAPM analysis. The first set for AIC Ex. 9.5, (10.24% - Bloomberg) and (11.58% - Value Line) was based on constant growth DCF returns of 12.49% and 13.84% respectively, less the current 30-year Treasury bond yield of 2.25%. The second set for AIC Ex. 9.8 (11.18% - Bloomberg) and (12.25% - Value Line), was based on constant growth DCF returns of 13.44% and 14.51% respectively, less the current 30-year Treasury bond yield of 2.25%. IIEC/CUB/FEA Ex. 2.0 at 74.

IIEC/CUB/FEA argue these risk premiums are based on unsustainable growth rates. IIEC/CUB/FEA note the expected growth rates used to calculate the expected market return that are assumed by Mr. D'Ascendis are between 2.5x and 3.1x, while the expected growth rate of the U.S. GDP of 4.0%. *Id.* at 74-75. IIEC/CUB/FEA further note, the data used to calculate these rates includes individual company growth rates as high as 80.4%. The growth rate associated with Alexandria Real Estate Equities. IIEC/CUB/FEA emphasize, assuming an 80.4% growth rate, it would take less than 13 years for this Company's reported capitalization of \$12.97 billion to exceed the most current recently reported GDP of the United States of \$21.53 trillion, and just under 14 years to outgrow the U.S. economy, assuming the economy grew at 4% year-over-year. IIEC/CUB/FEA stress, assuming a growth rate of 80.4% for Alexandria Real Estate Equities, as Mr. D'Ascendis did, its market capitalization would exceed \$50.1 trillion in 2034, exceeding the U.S. GDP by \$12.8 trillion. IIEC/CUB/FEA maintain this is not possible. IIEC/CUB/FEA argue that Mr. D'Ascendis' assumptions are unreasonable and economically and financially unrealistic. *Id.* at 75. IIEC/CUB/FEA assert growth rates reflecting this data, such as those used to develop the risk premiums in the subject CAPM analysis are not sustainable.

IIEC/CUB/FEA believe Mr. D'Ascendis' DCF derived expected returns on the market are not sustainable. Therefore, they are unreasonable. IIEC/CUB/FEA witness Walters compared the markets achieved compound returns over rolling five-, ten-, twenty- and fifty-year periods for the period of 1926 through 2018. Mr. Walters compared Mr. D'Ascendis' average expected return of 13.57% to the observed returns for each of these rolling periods. Mr. Walters' findings are summarized in Table 14 of his testimony IIEC/CUB/FEA Ex. 2.0 at 77.

IIEC/CUB/FEA note of the 89 observed rolling five-year averages, 52 (or 58.4%) of them were less than Mr. D'Ascendis' average expected returns, 13.57%. IIEC/CUB/FEA declare Mr. D'Ascendis' projected returns on market exceed all but one of the 44 observed rolling 50-year averages. *Id.* at 76.

IIEC/CUB/FEA witness Walters performed the same analysis on his expected returns on the market in comparison to the same rolling periods, five-, ten-, twenty-, and fifty-years. Mr. Walters' average expected return on the market of 11.46% or higher occurred 49.4% of the time on a rolling five-year basis. It occurred 50% of the time on a rolling twenty-year basis. Thus, IIEC/CUB/FEA assert, it has been demonstrated that Mr. D'Ascendis' expected returns on the market are unsustainable, excessive and inconsistent with achieved returns on the market. As a result, IIEC/CUB/FEA maintain this CAPM analysis should be rejected. *Id.* at 77.

IIEC/CUB/FEA assert the second flaw in the AIC CAPM analysis is the mismatch between the market risk premium and the risk-free rates used in that analysis. IIEC/CUB/FEA note Mr. D'Ascendis measured the market risk premium based on his DCF return on the market less his current risk-free rate estimate of 2.25%. IIEC/CUB/FEA point out there is an error in the calculation. The error is that the market risk premium that corresponds with a risk-free rate of 2.25% should not be the same as the market risk premium that corresponds with a risk-free rate of 2.42% or 3.45% as shown in his Capital Asset Pricing Model Results – Value Line Derived Market Risk Premium in AIC Exhibit 9.5, Columns 3 and 4, and his Capital Asset Pricing Model Results – Bloomberg and Value Line Derived Market Risk Premium shown on AIC Exhibit 9.8, Columns 3 and 4. IIEC/CUB/FEA Ex. 2.0 at 78.

IIEC/CUB/FEA note for example, assuming Mr. D'Ascendis' expected return on the market of 13.44% and 14.51% for the S&P 500, the market risk premiums that correspond with the risk-free rate of 2.42% should be the difference between his market estimate of 13.44% (Bloomberg) and 2.42%, or 11.02%, and his market return estimate of 14.51% (Value Line) less his 2.42% risk-free rate, or 12.09%. IIEC/CUB/FEA stress these errors are consistent throughout Mr. D'Ascendis' analysis. In other words, Columns 3 and 4 of Lines "Near Term Projected 30-Year Treasury", and "Long-Term Projected 30-Year Treasury" in AIC Exhibits 9.5 and 9.8 are overstated. IIEC/CUB/FEA emphasize overstating the market risk premium in the CAPM study were projected Treasury bond yields are used, produces a flawed and erroneous result that overstates the fair CAPM return estimate for AIC in this case. *Id.* at 78-79.

Importantly, IIEC/CUB/FEA point out that if Mr. D'Ascendis' studies were corrected to properly calculate the market risk premium to correspond with the projected risk-free rate, his near term projected CAPM results would produce an average CAPM return between 9.61% for his dividend paying company analysis and 9.67% for his total S&P 500 analysis. IIEC/CUB/FEA note the midpoint of these two corrected estimates is 9.64%. IIEC/CUB/FEA point out that once corrected, Mr. D'Ascendis' expected returns on the market to reflect more recent and more reasonable data to Mr. Walters average expected return on the market of 11.46%, would produce CAPM estimates in the range of 7.71% to 8.46%, with a midpoint of 8.09%. *Id.* at 79-80.

AIC ECAPM

IIEC/CUB/FEA note Mr. D'Ascendis performed a modified version of the traditional CAPM, known as the ECAPM, in an attempt to correct for some deficiencies inherent in the original model. Empirical tests have shown that the expected return line, or security market line, predicted by the CAPM are not as steep as the model would have one believe. In other words, the traditional CAPM understates the expected return for securities with betas less than 1 and overstates the expected return for securities with betas greater than 1. IIEC/CUB/FEA witness Walters explained that, in addition to specific material flaws with Mr. D'Ascendis' ECAPM, every one of the flaws he previously discussed with regard to Mr. D'Ascendis' traditional CAPM analysis (i.e., incorrectly calculated market risk premiums, unsustainable expected market returns, and unrealistic long-term projected risk-free rate) are present in Mr. D'Ascendis' ECAPM analysis. IIEC/CUB/FEA Ex. 2.0 at 80. IIEC/CUB/FEA assert these flaws alone are grounds for rejected his ECAPM results in their entirety.

IIEC/CUB/FEA point out the specific flaw employed by Mr. D'Ascendis in his ECAPM analysis is the use of an adjusted beta. *Id.* at 80. IIEC/CUB/FEA note, the ECAPM recognizes that the traditional CAPM underestimates the returns for stocks with betas less than 1 (like utility stocks) and overstates the returns for stocks with betas greater than 1. The adjustments made in the ECAPM attempt to correct for these shortcomings by increasing the expected returns for stocks that have betas less than 1 and lower the expected returns for stocks with betas greater than 1. IIEC/CUB/FEA note this is known as flattening the SML. IIEC/CUB/FEA explain the SML is the plotted line based on the combination of expected returns (vertical axis) at a given level of risk (measured by beta and represented on the horizontal axis). IIEC/CUB/FEA assert the specific flaw with Mr. D'Ascendis' ECPAM is that he has employed an adjusted beta. IIEC/CUB/FEA note that much like the ECAPM adjustments, adjusted betas also flatten the SML, or, increases the expected returns for stocks that have betas less than 1 (like utility stocks) and lower the expected returns for stocks with betas greater than 1.

IIEC/CUB/FEA stress there is simply no legitimate basis to use an adjusted beta within an ECAPM because it unjustifiably alters the security market line and materially inflates a CAPM return for a company with a beta less than 1, such as utility stocks. IIEC/CUB/FEA Ex. 2.0 at 82-83.

Importantly IIEC/CUB/FEA note, Staff witness Phipps echoes the same concerns with Mr. D'Ascendis' application of the ECAPM with an adjusted beta the IIEC/CUB/FEA witness Walters makes. See Staff Ex. 4.0 at 42-43. She correctly concluded that D'Ascendis' ECAPM should be rejected. *Id.*

IIEC/CUB/FEA assert, in addition to the obvious and biased flaws inherent in his analysis as being reason enough for this Commission to reject Mr. D'Ascendis' ECAPM analysis and its results, the Commission should look to its previous Order on the matter. Specifically, in Docket No. 11-0767 the Final Order stated:

The Commission cannot recall a proceeding in which it relied upon the ECAPM in establishing the cost of common equity for a utility. In the instant proceeding, the record supports a finding that use of adjusted betas in the ECAPM is

inappropriate. As Staff witness Ms. Freetly explained, by using adjusted betas she already effectively transformed her Traditional CAPM into an ECAPM. Therefore, including an additional beta adjustment in the ECAPM model would result in inflated estimates of the samples' cost of common equity.

Docket No. 11-0767, Order at 95.

IIEC/CUB/FEA argue, the unreasonableness of Mr. D'Ascendis' application of the ECAPM while using adjusted betas is clear when looking at the results of his analysis, which range from a low of 10.0% to a high of 12.7% with a midpoint of approximately 11.35%. IIEC/CUB/FEA note the average authorized ROE for gas utilities has not been at a level of 11.35% since the year 2000. IIEC/CUB/FEA Ex. 2.9. IIEC/CUB/FEA advocate that the ECAPM as employed by Mr. D'Ascendis be rejected in its entirety.

AIC's Bond Yield Plus Risk Premium

IIEC/CUB/FEA point out that AIC witness D'Ascendis constructed a risk premium ROE estimate based on the premise that equity risk premiums are inversely related to interest rates. AIC Ex. 9.0 at 62-63; IIEC/CUB/FEA Ex. 2.0 at 83. As shown on AIC Exhibit 9.9, Mr. D'Ascendis estimated that the average gas equity risk premiums are 4.75% over the period January 1980 through January 24, 2020. Mr. D'Ascendis applied a regression formula to the current, near term, and long-term projected 30-year Treasury bond yields of 2.25%, 2.42%, and 3.45% to produce gas equity premiums of 7.65%, 7.46% and 6.48%, respectively. AIC Ex. 9.0 at 64; AIC Ex. 9.9. Mr. D'Ascendis added these equity premiums to the corresponding treasury yields to produce costs of equity estimates of 9.90%, 9.87% and 9.93% respectively. AIC Ex. 9.0 at 64.

As IIEC/CUB/FEA advance, Mr. D'Ascendis' risk premium analysis is flawed for two reasons. First IIEC/CUB/FEA note, he relied on a long-term projected interest rate of 3.45%, which is significantly above the current level or any recent projected level. Therefore, it should be disregarded. Second IIEC/CUB/FEA claim, the predictive strength of Mr. D'Ascendis' regression weakens in the post-recession time period beginning in 2010. IIEC/CUB/FEA Ex. 2.0 at 84.

IIEC/CUB/FEA witness Walters explained that the relationship shown in Mr. D'Ascendis' regression analysis is not applicable to the current capital market environment. Mr. Walters observed that the strength of a relationship between the dependent variable and the independent variable in a regression analysis is best explained by the R-squared value. IIEC/CUB/FEA note the R-squared value measures how much explanatory changes in the independent variable will have on changes in the dependent variable. A higher value indicates a strong relationship. IIEC/CUB/FEA Ex. 2.0 at 84. IIEC/CUB/FEA note in this case the dependent variable in the subject regression analysis is the risk premium and the independent variable is the nominal interest rates. *Id.* According to AIC Exhibit 9.9, the R-squared value is 79.75% when the time period from January 1980 through January 2020 is measured. However, IIEC/CUB/FEA witness Walters established that when only measuring the relationship between the risk premium (the dependent variable) and interest rates (the independent variable) over the 2010 through January 2020 time period, the R-squared measure climbs to 52.12%. IIEC/CUB/FEA point out this declining R-squared indicates a weakening of

the statistical predictability produced from Mr. D'Ascendis' regression analysis. Therefore IIEC/CUB/FEA maintain, Mr. D'Ascendis' assumption that equity risk premiums can be engaged by only changes in interest rates is not supported by his regression analysis. *Id.* at 84-85.

IIEC/CUB/FEA note, however, that Mr. D'Ascendis' bond yield plus risk premium analysis can be revised to reflect current projections of Treasury yields. IIEC/CUB/FEA point out, adding an equity risk premium of 6.97%, which is the most recent 5-year average risk premium over Treasury yields, to the 30-year Treasury yield of 2.42% produces a risk premium ROE result of 9.39%. *Id.* at 84-85; IIEC/CUB/FEA Ex. 2.9.

Flotation Cost

IIEC/CUB/FEA point out AIC witness D'Ascendis considered flotation costs in arriving at his recommended ROE. AIC Ex. 9.0 at 27. In rebuttal, he indicated he had used Ameren Corporation's (AIC's parent) actual flotation costs ". . . to calculate an indicated flotation cost adjustment." AIC Ex. 23.0 at 34. Mr. D'Ascendis specifically considered the flotation adjustment in determining whether his recommended ROE would fall within the range of ROE results he developed. AIC Ex. 9.0 at 3. IIEC/CUB/FEA stress that, despite claims to the contrary, Mr. D'Ascendis adjusted his specific ROE recommendation to effectively include flotation costs. Mr. D'Ascendis was critical of IIEC/CUB/FEA witness Walters for his failure to "reflect" flotation costs in his ROE recommendation. AIC Ex. 23.0 at 45-46. IIEC/CUB/FEA assert Mr. D'Ascendis' "consideration of flotation costs" results in an overstated ROE recommendation which is another reason AIC's recommended ROE of 10.5% should be rejected.

As IIEC/CUB/FEA witness Walters pointed out, Mr. D'Ascendis, in his direct testimony, recommended a ROE 15 basis points above the midpoint of his recommended range. IIEC/CUB/FEA Ex. 2.0 at 86. IIEC/CUB/FEA confirm that while Mr. D'Ascendis indicated that he did not make a specific adjustment to his ROE for flotation costs, he clearly used flotation costs as a reason to recommend a ROE in excess of the midpoint of his range. *Id.* at 86.

IIEC/CUB/FEA note in rebuttal, Mr. D'Ascendis opined that his consideration of flotation costs was based on his calculation of flotation costs for AIC's parent, Ameren Corporation. AIC Ex. 23.0 at 5. IIEC/CUB/FEA argue that this does not save his flotation cost "consideration adjustment". IIEC/CUB/FEA correctly point out the Commission has specifically rejected Mr. D'Ascendis' proposal where AIC proposed a flotation cost adjustment based on its parent Ameren Corporation's flotation costs. IIEC/CUB/FEA note in Docket No. 13-0192, AIC witness Hevert claimed that he had not made a specific flotation cost adjustment, but considered the effect of flotation cost in determining where AIC's ROE would fall within the range of his results, just as Mr. D'Ascendis has proposed in this case. *Ameren III. Company, d/b/a Ameren III.*, Docket No. 13-0192, Order at 165 (Dec. 18, 2013). IIEC/CUB/FEA emphasize, as it did in Docket No. 13-0192, the Commission should reject any adjustment to the recommended cost of equity to reflect flotation costs.

d) Commission Analysis and Conclusion

The Commission agrees with both Staff and IIEC/CUB/FEA that AIC's proposed 10.50% return on common equity is in excess of current market costs of equity for regulated gas distribution companies.

AIC, Staff, and IIEC/CUB/FEA submitted DCF and CAPM ROE estimates. IIEC/CUB/FEA and AIC also submitted RPM analyses. AIC alone provided ECAPM and expected earnings analyses. The Commission notes that it generally relies on DCF and CAPM estimates for decision-making purposes.

As the parties explain, the CAPM requires estimates of beta, the risk-free rate of return, and the rate of return on the market. The Commission finds that AIC's CAPM analysis suffers from many of the same flaws that have led the Commission to reject the Company's analysis in the past. See Docket No. 13-0192, Order at 164-165; see *also* Docket No. 11-0282, Order at 123-125.

Regarding the beta estimates, Staff and IIEC/CUB/FEA point out that, contrary to AIC's approach, the Commission routinely adopts beta parameters that reflect both weekly and monthly beta estimates because the use of both estimates ameliorates the weaknesses of each type. Another flaw in AIC's beta estimates is its use of a two-year beta measurement period. As the Commission previously found, beta estimates measured over a shorter time period are more prone to error due to short-term changes in risk and investor risk preferences. Docket No. 13-0192, Order at 164. This is why the Commission routinely finds the use of betas calculated with five years of data more reliable.

Regarding the risk-free rate of return, the Commission finds that AIC improperly relies on forecasted U.S. Treasury bond yields as a proxy for the risk-free rate of return. Staff points to numerous Commission decisions evincing the Commission's preference for using current yields versus forecasted yields because it is impossible to predict future interest rates. Regarding the market return estimate, the Commission also agrees with Staff and IIEC/CUB/FEA that AIC's calculation improperly applies a dividend discount model to non-dividend paying companies and is based on unsustainable growth rates.

Accordingly, the Commission declines to give weight to AIC's CAPM analysis in its determination of the ROE in this proceeding. Furthermore, because AIC's ECAPM suffers from the same flaws, it is likewise rejected. Aside from suffering from the same flaws as its CAPM, the Company's ECAPM suffers further because it uses adjusted betas. The Commission routinely rejects ECAPM models using adjusted betas because this creates a double adjustment, which produces inflated ROE estimates.

Both IIEC/CUB/FEA and AIC provide RPMs in this proceeding. Staff cites to the numerous dockets wherein the Commission rejected such models. In rejecting RPMs, the Commission found that they contain proxy sample flaws and can use outdated data. The Commission notes that in its recent decision in Docket No. 18-1775, the Commission did apply a RPM in its ROE calculation. In so doing, the Commission "acknowledge[d] that there may be a value in exploring additional models presented by the parties . . . to bring our methodology into closer alignment with how investors inform their investment decisions." Docket No. 18-1775, Order at 119. While the Commission may occasionally

deviate from its customary approach, no compelling reasons have been presented to support such deviation in this docket. The decision in Docket No. 18-1775 was based on the record in that proceeding and is not binding here. The Commission does not find that the record in this proceeding warrants such a drastic reversal of the Commission's normal reliance on DCF and CAPM analyses in deciding the appropriate ROE. Staff notes that the Commission relied on a RPM analysis once prior to the decision in Docket No. 18-1775, but in a later proceeding determined that "[i]nsofar as it [RPM] crept into decision-making in Docket No. 05-0597, that was an anomaly that we will not repeat." *N. Shore Gas Co./The Peoples Gas Light and Coke Co.*, Docket Nos. 07-0241/07-0242 (Cons.), Order at 94. Obviously that anomaly was repeated in Docket No. 18-1775, but the Commission declines to repeat such an anomaly in the current proceeding.

The final model used by AIC is an expected earnings analysis. Again, this is a type of model that the Commission normally rejects. See Docket No. 10-0467, Order at 152. In rejecting such comparable earnings methods in the past, the Commission reasoned that the method incorrectly posits that earned returns on book common equity are the same as investor-required return on common equity. The Commission finds no such reason to reverse its consistent practice regarding this type of ROE analysis.

Based on the above reasoning, the Commission rejects IIEC/CUB/FEA's and AIC's RPM ROE estimates as well as AIC's CAPM, ECAPM, and expected earnings ROE estimates. Therefore, the Commission also rejects AIC's alternative ROE proposal of 9.75% because this proposal includes AIC's RPM and CAPM ROE estimates.

The remaining ROE estimates include the DCF estimates provided by AIC, Staff, and IIEC/CUB/FEA, which are 9.84%, 9.45% and 9.00%, respectively, as well as Staff's and IIEC/CUB/FEA's CAPM estimates, which are 9.18% and 9.00% respectively. As the Commission recently determined, "[a]n authorized rate of return that is not competitive will deter continued investment in the State of Illinois." Docket No. 18-1775, Order at 119. Considering the uncertainty in current capital markets due to the COVID-19 pandemic, the Commission finds that IIEC/CUB/FEA's 9.0% DCF and CAPM ROE estimates are insufficient to insure financial soundness. These estimates are therefore rejected.

The remaining ROE estimates for the Commission's consideration are Staff's CAPM estimate (9.18%), and AIC's and Staff's DCF estimates (9.84% and 9.45%, respectively). Averaging these together results in a ROE of 9.49%. The Commission finds that a ROE of 9.49% is reasonable and it is hereby approved.

4. Recommended Overall Rate of Return

Based on the findings in this Order concerning AIC's capital structure and cost of debt and equity, the Commission adopts a rate of return of 6.970% as calculated below. This rate of return on rate base includes a ROE of 9.490% and a capital structure including a common equity ratio of 48.63% long-term debt, 0.11% short-term debt, 0.83% preferred stock, and 50.43% common equity.

Type of Capital	Proportion	Cost	Weighted Cost
Long-Term Debt	48.634%	4.353%	2.117%
Short-Term Debt	0.110%	1.850%	0.002%
Preferred Stock	0.833%	4.980%	0.041%
Common Stock	50.427%	9.490%	4.786%
Bank Facility Costs		0.019%	0.020%
Total	100%		6.970%

V. COST OF SERVICE

A. Uncontested Issues

1. Customer 902 Weighting Factor

In its direct testimony, AIC proposed to modify the weighting factor assumptions in CUST902. AIC explains that currently, meter reading expense has been classified as customer-related and thus the number of customers forms the basis of the allocation factor. Weighting factors based on time required to manually read a meter were applied to the number of customers in each class in order to more appropriately allocate cost to the cost-causer.

AIC expects that by January 2021, it will have completed the installation of its AMI technology, which allows AIC to automatically read all customer meters without the need for the traditional truck roll to the premises. AIC explains that the AMI technology eliminated not only the majority of the cost associated with the manual metering reading activity recorded in FERC 902, but also the cost differential between classes and need for weighting factors. As such, AIC proposes to eliminate these weighting factors included in CUST902 and rely solely on the number of customers in each class as the basis for the allocation factor. In their rebuttal filing, neither Staff nor the AG objected to AIC's proposed modification of CUST902 weighting factors.

The Commission finds that AIC's proposed modification of CUST902 weighting factors is reasonable and it is hereby approved.

B. Contested Issues

1. Cost of Service Studies

a) AIC's Position

AIC explains that in this case, as in previous gas rate cases, AIC used the peak-and-average ("P&A") method to allocate demand-related transmission and distribution ("T&D") main costs among the various rate classes. *Ameren Ill. Co.*, Docket No. 18-0463; Docket No. 15-0142, Order at 98; *Ameren Ill. Co.*, Docket 13-0192, Order at 179 (Dec. 18, 2013); *Ameren Ill. Co.*, Docket 11-0282, Order at 135 (Jan. 10, 2012); Docket 07-0585 (Cons.), Order at 265-69. AIC notes that this is an allocation method based in part on Design Day Demand (peak daily therms) and in part on Average Demand (average daily therms). *Id.* AIC further states that the National Association of Regulatory Utility Commissioners' Gas Distribution Design Manual ("NARUC Design Manual") notes that

the P&A method “allocates cost to all classes of customers and tempers the apportionment of costs between the high and low load factor customers.” IIEC-FEA Ex. 1.0 at 15. AIC also notes that Staff agrees that AIC’s Cost of Service Study (“COSS”) appropriately assigns costs to the various functions and rate classes.

AIC avers that as in previous gas rate cases, certain large customers oppose the Company’s approach and seek to shift costs to the residential class. AIC points out that IIEC/FEA witness York claimed that use of P&A allocation is inappropriate, and ultimately recommended that the Commission consider the results of AIC’s Embedded Cost Of Service Study (“ECOSS”) as one bookend of a range of potential outcomes under different industry-accepted ECOSS methods. AIC notes that she recommended the other ECOSS bookend should be based on two adjustments to the Company’s ECOSS that include an allocation of T&D capacity costs on the basis of class peak demands and the classification of distribution mains to both a demand and a customer component.

AIC asserts that the Commission has previously rejected alternative proposals of this nature and should do so again here. AIC avers that IIEC/FEA witness York’s recommendation is not supported by the record evidence and does not best reflect cost causation and AIC maintains that her proposal would result in a shift of \$17 million of revenue requirement responsibility to the residential class while removing approximately \$11.6 million of revenue requirement responsibility from the GDS-4 customer class. AIC argues this shift would have a compounding impact on residential customers year after year if IIEC/FEA’s proposal were adopted. AIC asserts that this method would also completely remove all demand-related T&D main costs from the GDS-5 class, a class of customers who utilize T&D mains to receive natural gas service, are seasonal, and have significant capacity needs during a time other than the design day. Furthermore, AIC argues that IIEC/FEA witness York’s recommendation is contrary to long-standing and well-established Commission practice.

AIC argues that when IIEC/FEA urge the Commission to consider the current economic situation that has resulted from the COVID-19 pandemic and to ignore long standing Commission precedent, IEC/FEA fail to discuss that their proposal shifts costs away from GDS-4 customers and onto GDS-1 residential customers, who have themselves been negatively impacted. AIC argues that these customers have been impacted so much that the Commission has put in place a moratorium on disconnections and approved debt forgiveness programs for residential customers. *In the Matter of Moratorium on Disconnection of Util. Services during the Public Health Emergency Declared on March 9, 2020 pursuant to Sections 4 and 7 of the Ill. Emergency Management Agency Act*, Docket 20-0309, Order at 4 (June 18, 2020). AIC continues, stating that the Commission took no similar action when it came to industrial customers. AIC asserts that it seems the Commission is fully aware of the current economic situation and its impact on all customer classes and has taken what it believes to be the appropriate action.

Moreover, AIC argues that addressing the impacts of COVID-19 is beyond the scope of this proceeding, in light of the global settlement, stipulation and Commission order in Docket No. 20-0309. AIC states that in Docket No. 20-0309, it entered into a settlement with eight large utilities, Staff, and six intervenor groups. That settlement, and the subsequent Commission Order, established policies and procedures relating to utility

credit and collections procedures, payment assistance, and recovery of costs incurred by those utilities as a result of the COVID-19 pandemic. AIC notes that IIEC represented Archer Daniels-Midland, who has also intervened in this matter, and participated in the extensive and comprehensive settlement discussions throughout the pendency of that proceeding, and so should be aware of the policies and procedures arising out of that proceeding. AIC states that to the extent that IIEC or IIEC/FEA suggests that the Commission now provide additional temporary relief to customers, specifically commercial and large industrial customers, this is not the appropriate docket for that concern and should have no bearing on the Commission decision in this proceeding.

AIC explains that while its P&A method does rely on the Design Day Demand (peak daily therms), it is also based in part on Average Demand (average daily therms). AIC maintains that the Average Factor and Peak Factor are combined to derive the P&A allocation factor, which when developed for the Company's COSS model, results in an allocation of fixed capacity costs primarily on the basis of Design Day Demand. However, as both AIC and Staff point out, IIEC's recommendation eliminates any average component and does not reflect cost causation for all rate classes because it would completely eliminate allocation of demand-related T&D costs to the GDS-5 class, and shift those costs to all other rate classes, even though the GDS-5 class utilizes T&D Mains. AIC pointed out this deficiency in Docket No. 15-0142, and the Commission approved the Company's P&A method over the IIEC Design Day method in that proceeding.

AIC notes that the Commission has rejected several of IIEC/FEA witness York's arguments in previous gas rate cases, when they were presented by IIEC. AIC illustrates that in Docket No. 04-0476, IIEC argued unsuccessfully, that the P&A method resulted in excessive allocation of T&D costs to large volume customers. *Ill. Power Co.*, Docket No. 04-0476, Order at 65 (May 17, 2005). AIC states that there, the Commission noted that selection of an allocation factor is necessary because it is difficult or impossible to directly assign the costs of T&D plant among customer classes and because the cost of T&D plant among customer classes cannot be directly assigned, it cannot be said that its application results in "over-allocation." *Id.*

Additionally, AIC asserts that IIEC/FEA recycled previously rejected arguments, specifically that the P&A method double-counts average demand. IIEC/FEA argues that this double counting is unnecessary and punitive towards GDS-4 customers. However, AIC points out that IIEC/FEA have made this argument previously and while IIEC/FEA claimed that the Company did not respond to this issue, the Company notes that it has previously addressed this issue and the Commission has rejected this argument time and time again, most recently in Docket No. 15-0142. See Docket No. 15-0142, Order at 98. AIC points out in previous dockets and again in this docket, there are imperfections in using a Design Day Method alone (lack of allocation of capacity related T&D main cost to the GDS-5 class) and as such, the Commission prefers the P&A method which relies primarily on the Design Day Demand, but also to some extent the average demand, which provides a better cost allocation of capacity related T&D mains to all customer classes. AIC argues that IIEC/FEA witness York's arguments related to the P&A method and an alleged failure to reflect the costs incurred by the Company must therefore be rejected in this proceeding.

AIC argues that IIEC/FEA witness York cannot substantiate the general statement that the GDS-4 class subsidizes the cost of capacity of other classes and that the P&A method used by AIC causes a mismatch or subsidy of capacity costs allocated among customer classes by GDS-4 customers. AIC avers that IIEC/FEA witness York's recommendation is based on the elimination of allocations of demand-related T&D costs to GDS-5 class and shifts those costs to all other rate classes. AIC maintains that the Commission has addressed this exact point and has stated that its rationale for using the P&A method to allocate T&D main costs is that these facilities "exist because there is a daily need for such facilities," not solely because there is a need to serve peak demand. *Cent. Ill. Pub. Serv. Co.*, Docket No. 02-0798 (Cons.), Order at 98 (Oct. 22, 2003).

AIC maintains that the Commission must reject this assertion because as AIC witness Schonhoff explained, AIC's P&A method, the Commission's preferred method, best reflects cost causation for all rate classes. AIC asserts that IIEC/FEA witness York's recommendation would in actuality result in a shift of approximately \$17 million of revenue requirement responsibility to the residential customer class while removing approximately \$11.6 million of revenue requirement responsibility from GDS-4 customer class. AIC notes that Staff argued that GDS-1 rates are already designed to over-recover the class cost of service, and in turn to subsidize the GDS-4 service class and in addition, IIEC/FEA's recommendation further moves away from cost causation principles. Moreover, it would also completely remove all demand-related T&D mains costs from GDS-5 customer class.

AIC further argues that IIEC/FEA witness York's proposal is contrary to long-standing and well-established Commission practice and that the Commission has found "when allocating [transmission and distribution] plant costs an emphasis on average demand is appropriate." *Ill. Power Co.*, Docket 04-0476, Order at 64 (May 17, 2005). Moreover, AIC notes, the Commission in many other cases, has likewise favored use of the P&A allocation methodology. See, e.g. *Ameren Ill. Co.*, Docket 18-0463; Docket No. 15-0142, Order at 98; *Ameren Ill. Co.*, Docket 13-0192, Order at 179 (Dec. 18, 2013); *Ameren Ill. Co.*, Docket 11-0282, Order at 135 (Jan. 10, 2012); Docket 07-0585 (Cons.), Order at 265-69; *N. Ill. Gas Co.*, Docket 04-0779, Order at 101-02 (Sept. 20, 2005); *Ill. Power Co.*, Docket 04-0476, Order at 64-65 (May 17, 2005); *Cent. Ill. Pub. Serv. Co.*, Docket 02-0798 (Cons.), Order at 98 (Oct. 22, 2003); *Cent. Ill. Light Co.*, Docket 02-0837, Order at 90-91 (Oct. 17, 2003). AIC opines that the Commission's rationale for using the P&A method to allocate transmission and distribution main costs is that these facilities "exist because there is a daily need for such facilities," not solely because there is a need to serve peak demand and thus, the P&A method "properly emphasizes the average component to reflect the role of year-round demands in shaping transmission and distribution investments." *Cent. Ill. Pub. Serv. Co.*, Docket 02-0798 (Cons.), Order at 98 (Oct. 22, 2003). AIC argues that IIEC/FEA witness York's recommendation would achieve the opposite result yielding complete elimination of the average demand component from the P&A method.

AIC states that the longstanding Commission preference in Illinois for the P&A allocation method directly contradicts Ms. York's and IIEC/FEA's assertions that the Commission decisions on the allocation of T&D mains costs are "not economically logical." IIEC/FEA Exhibit 1.0 at 7. Further, AIC explains, other Illinois utilities use the

same or similar methods. AIC illustrates that in Docket Nos. 17-0124 and 18-1775, for example, the Commission approved use of the P&A method for Nicor. *N. Ill. Gas Co.*, Docket No. 17-0124, Order at 115 (Jan. 31, 2018); Docket No. 18-1775, Order at 126. AIC states additionally, in Docket No. 14-0225, for example, the Commission approved use of the P&A method for allocating North Shore Gas Company and the Peoples Gas Light and Coke Company's demand-related T&D costs. *N. Shore Gas Co.*, Dockets 14-0224/14-0225 (Cons.), Order at 148 (Jan. 21, 2015). AIC alleges that IIEC has repeatedly and unsuccessfully made this argument against the P&A method and now, with no new facts, disregards for the Commission's clear preference on this issue by making the argument again. AIC asserts that this further demonstrates why IIEC/FEA witness York's recommendation against the P&A method should be rejected.

AIC avers that IIEC/FEA urge the Commission to ignore prior decisions and focus purely on the evidence in this docket, specifically stating the ratemaking principles applied in prior records should carry little or no weight in this docket but go on to state that the evidence in this docket is what matters. AIC asserts that it agrees that the evidence is paramount in a Commission decision and recognizes that the Commission's prior orders are generally not *res judicata* (*City of Chicago v. Ill. Commerce Comm'n*, 133 Ill. App. 3d 435, 440 (1985)), but argues that does not mean the Commission is prohibited from looking at or acknowledging rulings and longstanding preference when passing judgment on contested issues. AIC argues that while it is true that the Commission is not legally bound by its prior orders, it is well-established that when the Commission deviates from prior decisions it must "articulate a reasoned basis" for doing so, and those changes must not be arbitrary and capricious. *Citizens Utility Bd.*, 166 Ill. 2d at 132; *United Cities Gas Co. v. Illinois Commerce Comm'n*, 235 Ill. App. 3d 577, 597 (4th Dist. 1992). And, "while ordinarily an administrative action taken pursuant to statutory authority is entitled to great deference, an agency action that represents an abrupt departure from past practice is not entitled to the same degree of deference by a reviewing court." *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 180 Ill. App. 3d 899, 909 (1st Dist. 1988). AIC opines that the Commission may adhere to the spirit of its prior decisions when it deems fit and the Commission errs if it departs arbitrarily or capriciously from its past practices and principles. *City of Chicago v. Ill. Commerce Comm'n*, 133 Ill. App. 3d at 440. AIC argues that the Commission would be hard pressed to come up with a sound rationale for reversing its policy now and upon reviewing the evidence proposed by IIEC/FEA, the Commission should not adopt their proposal.

AIC notes that in support of her recommendation, IIEC/FEA witness York asserted that there are several jurisdictions other than Illinois that allocate mains using Design Day Demand, or Design Day Demand with a customer component. AIC also notes that IIEC/FEA witness York asserts that four jurisdictions other than Illinois rely on the results of multiple ECOSS models to inform an appropriate revenue spread. AIC continues, IIEC/FEA witness York asserts that IIEC/FEA's proposed ECOSS is an industry-accepted methodology and has been supported by AIC and Staff and approved by the Commission as well as other Illinois utilities in Docket Nos. 90-0072, 90-0007, and 91-0586.

AIC argues that use by other jurisdictions and thirty-year old decisions are not sufficient to override the Commission's strong preference for the P&A method—as IIEC/FEA witness York admits, the Commission has used this approach in recent gas rate

cases and it is an industry accepted ECOSS method. AIC explains that the Commission has since 2004 preferred the P&A method. And more recently in Docket No. 15-0142, IIEC proposed a similar Design Day Method that the Commission rejected, stating in its Final Order that "the evidence demonstrates that the P&A method recommended by AIC is reflective of cost causation principles, produces fair and reasonable results, and properly emphasizes the role of year-round demands in shaping T&D investments."; see Docket No. 15-0142, Order at 98. AIC avers that the Company's and the Commission's use of the P&A method is consistent with current industry practice in Illinois and elsewhere. AIC notes that while IIEC has introduced a variation of its Design Day demand allocation method in this proceeding by incorporating a customer-related element, it has not provided any new evidence in support of the Design Day allocation method for capacity-related T&D main costs. AIC asserts that the Commission should not now reverse course of more than 15 years of consistent practice in favor of an unsupported recommendation that would result in a significant shift in cost allocation.

Lastly, AIC alleges that IIEC/FEA witness York's recommendation is flawed in its removal of demand related T&D costs from the GDS-5 class. AIC explains that the GDS-5 customer class is a class of customers who utilize T&D mains to receive natural gas service, are seasonal, and have significant capacity needs during a time other than the design day. Thus, this class of customer should be allocated a portion of the demand-related T&D costs. AIC argues that traditional ratemaking principles of cost causation require GDS-5 rate class customers to pay something more than zero for their use of the T&D mains. See 220 ILCS 5/1-102(d)(iii). AIC states that this ratemaking principle cannot be reconciled with IIEC/FEA witness York's recommendation to remove all demand-related T&D costs from the GDS-5 rate class, which would be the practical result of her recommendation in this case. AIC states, this is the same deficiency that IIEC's proposal had in Docket No. 15-0142, where the Commission subsequently approved the Company's P&A method over the IIEC Design Day method in that proceeding. AIC argues that while the two proposals are similar and, as established previously, the Company's proposed method is rooted in the Design Day method, specifically, for low pressure distribution, 76% Design Day and only 24% Average Demand, the inclusion of the average factor provides a more appropriate cost allocation for all rate classes based on cost causation principles. AIC maintains that the Commission should find, as it has before, that IIEC/FEA witness York's and IIEC/FEA's proposal does not best reflect cost causation for the GDS-5 rate class because it does not allocate any portion of demand-related T&D costs to that class.

AIC agrees that overall, AIC's proposal to use the P&A method for the allocation of all demand related T&D mains cost is appropriate in light of all of the evidence in this proceeding. AIC points out that IIEC/FEA witness York has simply repackaged previously rejected proposals as an "adjustment" to AIC's ECOSS. AIC asserts that not only is her proposal contrary to long-standing and well-established Commission practice related to the allocation of demand related T&D main costs, IIEC/FEA witness York's proposal also contains a flaw that AIC's proposal does not: her proposal will completely eliminate allocation of demand-related T&D costs to the GDS-5 class and shifts those cost to all other rate classes. Specifically, it would also shift \$17 million of revenue requirement responsibility to the residential customer class, while removing approximately \$11.6 million of revenue responsibility requirement away from the GDS-4 customer class.

AIC concludes that for all the foregoing reasons, the Commission should again approve the P&A as the allocation factor for allocating all demand related T&D main costs in this case.

b) Staff's Position

Staff recommends that the Commission approve the COSS the Company provided with its initial filing. Staff notes that the company provided a single COSS with this filing that utilized the P&A allocation method that reflects cost causation and that has been approved by the Commission in AIC's last four rate cases. Docket Nos. 11-0282, 13-0192, 15-0142, and 18-0463.

Staff argues that one of the fundamental goals of equitable ratemaking is that the costs of supplying public utility services are allocated to those who cause the costs to be incurred. 220 ILCS 5/1-102(d)(iii). Staff opines that the Act indicates that if factors other than cost of service are considered in regulatory decisions, the rationale for these actions should be set forth. 220 ILCS 5/1-102(d)(iv). Thus, cost of service and cost causation should be primary considerations for the Commission.

Staff states that IIEC/FEA take issue with the Company's COSS; more specifically, IIEC/FEA disagree with the use of the P&A allocation method. Staff recounts that IIEC/FEA witness York provides an alternative COSS that reflects two adjustments to the Company's COSS, (1) to allocate a portion of the transmission and distribution system based on a Design Day Demand rather than based on the P&A method; and (2) to classify distribution mains to both the demand and customer component rather than to the demand component alone. Staff argues, then, given the results of the two different COSSs, IIEC/FEA witness York advocates for an equal percentage increase for each customer class. IIEC/FEA Ex. 1.0 at 2.

Staff understands IIEC/FEA's proposal to have the Commission approve more than one allocation method when considering the most appropriate COSS for use in this rate case. Staff argues that IIEC/FEA witness York's proposal to have a portion of the transmission and distribution system allocated on a Design Day Demand has the effect of shifting cost recovery from non-residential customers to residential customers. Staff asserts that as AIC witness Schonhoff illustrates in Table 2 of his rebuttal testimony, IIEC/FEA witness York's proposed allocation method would shift nearly \$17 million of revenue recovery from other classes to the residential class (GDS-1). Ameren Ex. 30.0 at 7. Staff opines that because GDS-1 rates are already designed to over-recover the class cost of service, and in turn to subsidize the GDS-4 service class in addition to others, this is a move even further away from cost-causation principles.

Staff asserts that Table 7 of the workpapers supporting IIEC/FEA witness York's Design Day Demand allocation approach demonstrates that the Design Day allocation factor does not allocate any costs associated with T&D mains to the GDS-5 customer class. Staff argues that consequently, the Design Day Demand allocation method shifts the GDS-5 class costs associated with T&D mains to all remaining customer classes. However, the GDS-5 class takes natural gas service using T&D mains and therefore should be responsible for its share of the costs associated with its use. Staff states that since no T&D main costs are assigned to the GDS-5 customer class, the Design Day allocation factor does not reflect cost causation for this customer class.

Staff also evaluated IIEC/FEA's proposal to allocate distribution mains to both the demand and customer components. Staff avers that in the Company's COSS, the costs of all service lines and meters are properly considered customer related because their primary purpose is to serve individual customers. Staff asserts, similarly, the distribution mains have the primary purpose of meeting all ratepayer demands for natural gas and are appropriately considered demand related. Staff maintains that the Company's proposed P&A allocation method recognizes the two key factors that drive investment in transmission and distribution plan and one factor is the need to meet peak demands for the system as a whole, not just for individual classes. Staff argues that is why coincident peak demands are used for one component of the allocator. Staff argues that secondly, the average allocator recognizes the role of year-round demands in shaping transmission and distribution investments through the average demand component.

Staff asserts that IIEC has advanced identical or similar arguments against the P&A allocation method for distribution main costs in several of the past Ameren gas rate cases (Docket Nos. 11-0282, 13-0192, 15-0142, and 18-0463) but the Commission has rejected such arguments, finding that the P&A allocation method is the preferred method for allocating Transmission and Distribution capacity costs. *Ameren III. Co.*, Final Order, Docket No. 11-0282, 135 (Jan. 10, 2012); *Ameren III. Co.*, Final Order, Docket No. 13-0192, 179 (Dec. 18, 2013); Docket No. 15-0142, Order at 98.

Staff states that IIEC/FEA witness York's proposal to include more than one allocation method would put an additional burden on the residential service class, where its rates are currently designed to over-recover the class cost of service to subsidize the GDS-4 service class (in addition to other classes). Staff continues stating that, IIEC/FEA witness York's allocation proposal would result in a rate design that deviates from what has been deemed appropriate and approved by the Commission in past rate cases. Staff argues that in fact, in the Final Order in Docket No. 15-0142, the Commission stated, "the evidence demonstrates that the peak and average method recommended by AIC is reflective of cost causation principles, produces fair and reasonable results, and properly emphasizes the role of year-round demands in shaping T&D investments." Docket No. 15-0142, Order at 98. Staff opines that IIEC/FEA witness York's proposal also does not require the GDS-4 class to make advances toward full cost of service recovery through rates and the Company's COSS better reflects cost of service than does IIEC/FEA's COSS or equal percentage increase proposal. Staff contends the Company's COSS is an acceptable guidance tool for setting rates in this docket and the Company's COSS appropriately assigns costs to the various functions and rate classes. Staff avers that the same methodologies have been used and accepted in previous rate cases and has no objection to the COSS as provided by the Company in this proceeding.

c) IIEC/FEA's Position

IIEC/FEA state in this docket AIC advocated the use of the P&A COSS. IIEC/FEA state that although they do not agree with the P&A method, they offer a compromise where the Commission considers AIC's COSS as one of the potential bookends of results, but also consider IIEC/FEA's COSS as the other bookend of results. IIEC/FEA witness York's COSS is based on two adjustments to AIC's COSS. IIEC/FEA Ex. 1.0 at 2; IIEC/FEA Ex. 1.0 at 6. IIEC/FEA argues the two IIEC/FEA adjustments are described as follows: (1) the cost of transmission mains should be allocated to customer classes using

Design Day Demand rather than the Company's P&A allocation factor; and (2) distribution main cost should be classified and allocated using both customers and demand. The portion of distribution main costs that should be classified as customer-related should be allocated on the basis of the number of customers in each class. The remaining portion of distribution main costs should be allocated on the basis of Design Day Demand, instead of the Company's P&A allocation factor. *Id.* at 3.

IIEC/FEA witness York explained that both AIC's COSS and her COSS show that gradualism is appropriate. IIEC/FEA Ex. 1.0. at 2. IIEC/FEA state AIC's COSS would require increases in present revenues ranging from 93% to over 200% to bring the GDS-4, Rider T customers to cost of service. *Id.* at 5, Table 1, Col.3. IIEC/FEA point out the 1.5 times system average increase proposed by AIC mitigates those increases so that the resultant increase is 35.9%, however, that increase to the rate class is still tantamount to rate shock. IIEC/FEA Ex. 3.0 at 18.

IIEC/FEA argue that IIEC/FEA witness York's adjustments more accurately assign costs to cost causers based on the way AIC designs its T&D systems, to provide reliable, uninterrupted service to customers. IIEC/FEA Ex. 1.0 at 3.

IIEC/FEA opine that the Company and Staff are quick to point to decisions in prior rate cases as essentially their only support for the P&A method, but the evidence in this docket is what controls. IIEC/FEA point out that the P&A method allocates the costs of T&D mains using a demand component-Design Day Demand as well as a volumetric component-Average Demand. IIEC/FEA Ex. 1.0 at 4. IIEC/FEA state that Staff witness Boggs offered a similar description: "The P&A allocation factor proposed by the Company partially utilizes the Design Day (for the Peak component), and partially uses the Average component. The Average component is computed by weighting average daily deliveries of gas by the system average load factor." Staff. Ex.12.0 at 4.0.

IIEC/FEA argue the inherent flaw in the P&A method is it counts Average Demand twice in the cost allocation: once in the Average Demand component and again in the Peak Demand component. IIEC/FEA Ex. 1.0 at 15. IIEC/FEA argue that by double counting the volumetric component of the allocation factor, the P&A method results in an over-allocation of T&D capacity costs to high load factor classes and an under-allocation of T&D capacity costs to low load factor customers. *Id.* at 16. According to IIEC/FEA, this particular allocation of T&D mains is wrong for several reasons.

IIEC/FEA point out that Ms. York provided a simple example that explained how sole reliance on the P&A method and its double counting of volumetric throughput does not fairly assess the costs of T&D mains. IIEC/FEA propose that looking a 100% load factor customer has a Design Day Demand of 100 Dth with its Average Demand also 100 Dth, under the P&A method, the 100 DTH is counted twice. IIEC/FEA argue the inequity occurs because this customer's volume of gas being delivered has no additional impact on the costs of mains, but the customer is being allocated more of the T&D costs based on that volume. IIEC/FEA Ex. 1.0 at 15-16. IIEC/FEA state that neither AIC nor Staff contests that the P&A method operates this way, and nor did they disagree the example was wrong for any reason.

IIEC/FEA argue that the P&A method is unnecessarily punitive towards GDS-4 customers who use the system efficiently by having higher load factors. IIEC/FEA assert

that using the T&D system efficiently means less costs are required to serve the load, but because the P&A method allocates costs partially on a volumetric component, customers who use large volumes of gas and with load factors higher than the system average, are penalized. IIEC/FEA aver the result is that higher load factor customers are allocated more capacity costs, which result in a higher per-unit cost of peak day capacity than lower load factor customers. IIEC/FEA Ex. 1.0 at 11.

IIEC/FEA state even the Company admits the cost to construct its T&D system does not vary with volume. IIEC/FEA notes that AIC witness Colyer stated that "...the Company's cost to construct distribution mains does not vary with the annual volume of natural gas delivered." IIEC/FEA Ex. 1.3 at 6. IIEC/FEA state, similarly, he did not identify volume as a factor that impacts the cost of transmission mains (*Id.*) and subsequently, IIEC/FEA argue allocation of T&D costs on the basis of average demand is problematic.

IIEC/FEA argue no party disagrees the GDS-4 customer class has high load factor customers. IIEC/FEA state, high load factor customers use the system more efficiently than the lower load factor customers. IIEC/FEA contend that all else equal, this means that low load factor customers will and should incur more T&D main cost: more cost because more capacity is needed to be available to serve that class. IIEC/FEA maintain that the P&A method ignores this cost causation factor.

IIEC/FEA witness York compared the per-unit cost of transmission mains allocated to the customer classes. IIEC/FEA Ex. 1.0 at 12, Table 4. IIEC/FEA state the GDS-1 capacity cost per unit is \$41.5 as compared to \$63.81 for the GDS-4 Rider T less than 60 psig customer class, and \$53.80 for the GDS-4, Rider S, greater than 60 psig class. IIEC/FEA say there is no rational basis for this disparity in the capacity cost per unit and because these GDS-4 subclasses are paying more per-unit, the cost of T&D main capacity required to provide firm service to lower load factor classes on the peak day, is being subsidized by the higher load factor classes. IIEC/FEA assert in particular, the GDS-4, Rider T, >60 psig, >30,000 MDCQ class is allocated a per-unit main cost of \$108.81, which is 2.3 times the system average per-unit main cost of capacity of \$47.46. IIEC/FEA state this compares to the GDS-1 class, which is allocated below-system-average per-unit main capacity cost of \$41.51. According to IIEC/FEA, this is inappropriate and causes a mismatch and/or subsidy of capacity costs allocated among customer classes. IIEC/FEA Ex. 1.0 at 12-13.

IIEC/FEA contend the evidence is overwhelming that AIC does not incur different per-unit costs of capacity to meet the Design Day Demands of customer classes, but rather the same per-unit capacity cost is incurred to serve all customers, regardless of the customer class. IIEC/FEA assert that a Design Day Demand allocation of capacity costs to classes accomplishes this result and matches the allocation of capacity costs to classes with how AIC incurs the cost of capacity. IIEC/FEA Ex. 1.0 at 13.

IIEC/FEA point out that the P&A method allocates 51.5% of transmission main gross plant costs to the GDS-1 class, even though the design of the AIC system requires that 58.9% of the main capacity be put into place to meet the Design Day Demand of the GDS-1 class. IIEC/FEA argue that a P&A allocation of these costs implies that only 51.5% of transmission main capacity is necessary to meet the GDS-1 peak demand, when in fact 58.9% of the capacity is necessary. IIEC/FEA argue that if capacity was allocated to

the GDS-1 class in this manner, there would not be enough pipe capacity in the ground to meet the class's Design Day Demand. IIEC/FEA Ex. 1.0 at 13-14; Table 5.

IIEC/FEA explain that the GDS-4, Rider T, >60 psig, >30,000 MDCQ class is allocated 12.7% of transmission main capacity under the P&A method, but only requires 5.6% of that capacity to meet its Design Day Demand. IIEC/FEA argue that by having more transmission main capacity allocated than needed, it means the subclass is paying for more capacity than necessary to meet its Design Day Demand. IIEC/FEA Ex. 1.0 at 14-15.

IIEC/FEA aver the implied amount of capacity paid for by classes does not match the amount of capacity required to meet their Design Day Demand and the P&A method is inappropriate for allocating costs to classes. IIEC/FEA state under the Design Day Demand allocation as addressed below, the allocation of transmission costs to each class matches the amount of capacity required to meet the Design Day Demand of each class. IIEC/FEA Ex. 1.0 at 15.

IIEC/FEA explain that understanding the Commission's preference for the P&A method, they offered a compromise. IIEC/FEA state that given the use of the P&A method by AIC and its prior approval by the Commission, the P&A method should be considered as one bookend to a range of potential class allocations of fixed capacity costs in this case.

The other end of the spectrum or bookend is IIEC/FEA's proposed COSS based on a Design Day Demand allocation of fixed capacity costs. Design Day Demand is the maximum demand the T&D system is built to serve. Design Day Demand consists of the aggregate maximum customer class peak demands that are coincident with each other on the system peak day. IIEC/FEA Ex. 1.0 at 4, fn1. IIEC/FEA state Staff witness Boggs similarly described it as, "The Design Day allocation factor . . . allocates the T&D main costs based on each customer class's demand at the time of the system peak." Staff Ex. 12.0 at 4.

IIEC/FEA argue that in their COSS, the Design Day Demand method allocates the cost of transmission mains across customer classes rather than the Company's P&A allocation factor. IIEC/FEA maintain that because a portion of distribution main costs are regarded as customer related, IIEC/FEA witness York allocated that portion of costs based on the number of customers in each class. She then allocated the remaining portion of distribution main costs on the basis of Design Day Demand, instead of the P&A allocation factor. IIEC/FEA Ex. 1.0 at 17. IIEC/FEA assert that AIC admitted IIEC/FEA had introduced a variation of its Design Day Demand allocation method different than prior proceedings, by incorporating a customer-related element of main cost, but says IIEC/FEA have not provided any new evidence in support.

IIEC/FEA witness York testified as to the cost causative factors that justified why a portion of the distribution costs should be classified as customer related and allocated based on the number of classes. IIEC/FEA Ex. 1.0 at 19-20. Ms. York also explained how the customer related portion of the distribution mains is invested, and why 20% of the main investment for the customer component was appropriate. *Id.* at 20-21; *Id.* at 22-23. IIEC/FEA argue that while AIC and Staff generally took issue with IIEC/FEA witness York's adjustments, they did not take issue with her methodology.

IIEC/FEA aver Design Day Demand is an industry-accepted methodology and has been supported by AIC, Staff, and approved by the Commission in The Peoples Gas Light and Coke Company rate cases, such as Docket Nos. 90-0007, and 91-0586. IIEC/FEA Ex. 3.0 at 9.

IIEC/FEA state that use of the Design Day Demand is appropriate for AIC as it designs and sizes its T&D systems based on the peak demands of its customers. IIEC/FEA point out according to AIC: "AIC natural gas facilities are designed to serve the aggregate peak hourly demand for all customer loads to assure reliable and uninterrupted natural gas service." IIEC/FEA Ex. 1.0 at 18. IIEC/FEA state in addition, AIC has indicated that, "the Company's cost to construct distribution mains does not vary with the annual volume of natural gas delivered." *Id.* at 18. According to IIEC/FEA, if AIC designed its T&D system capacity considering the aggregate average demand of its customers and not Design Day Demand, there would not be adequate capacity to meet the customers' aggregate coincident maximum demand either on the system peak day or on any day where actual demand exceeds average demand. IIEC/FEA point out this was amply illustrated in Table 7, Column 3, of Ms. York's direct testimony where the shortfall for the GDS-1 class is shown. *Id.* at 18-19; Table 7.

IIEC/FEA note AIC witness Schonhoff "...did not dispute IIEC/FEA witness York's assertion that IIEC's/FEA's adjusted ECOSS model better reflects the way AIC designs its T&D systems, and more accurately measures class cost of service than its own ECOSS model." IIEC/FEA Ex. 3.0 at 11. IIEC/FEA witness York added, "AIC has not disputed IIEC/FEA's adjusted ECOSS on the basis of cost of service principles,..." IIEC/FEA Ex. 3.0 at 2.

IIEC/FEA maintain use of a Design Day Demand allocation is wholly consistent with the drivers for the rate increase, AIC's investment in the T&D systems. IIEC/FEA state a Design Day Demand allocation of capacity costs to classes accomplishes this result and matches the allocation of capacity costs to classes with how the Company incurs the cost of capacity. According to IIEC/FEA, the GDS-4 class needs a smaller amount of the T&D system to meet its Design Day Demand while, AIC's P&A method fails to account for the fact the GDS-4 class more efficiently utilizes the relatively small amount of T&D capacity required to meet its Design Day Demand. IIEC/FEA Ex. 1.0 at 8-9.

IIEC/FEA note AIC witness Schonhoff cited a prior Commission order finding that the P&A method properly emphasizes the role of year-round demands in shaping T&D investments, where the phrase "year-round demands" is understood to refer to the use of the average demand component of the P&A allocation factor. Ameren Ex. 42.0 at 6. When asked in discovery if he agreed with the Commission's finding, Mr. Schonhoff indicated his understanding was that peak hourly demands shape T&D investments. IIEC/FEA Ex. 3.2 at 3-4. IIEC/FEA aver Mr. Schonhoff's response effectively supports IIEC/FEA's position that the Design Day Demand allocation better reflects cost causation and system design than the P&A allocation factor.

IIEC/FEA argue that IIEC/FEA witness York points out that some years ago the Commission approved the Design Day Demand for The Peoples Gas Light and Coke Company and many utilities use Design Day Demand in the manner prescribed by IIEC/FEA. IIEC/FEA state that Ms. York's IIEC/FEA Exhibit 1.1 provided examples of

utilities in other jurisdictions allocating mains using Design Day Demand, or Design Day Demand with a customer component.

IIEC/FEA aver that using the Design Day Demand allocation for transmission capacity costs, and a combination of Design Day Demand and customer allocation of distribution capacity costs, along with IIEC/FEA's recommended equal percentage system increase factor, provides a modest increase for the GDS-1 class, compared to the Company's proposed increase. IIEC/FEA maintain that Table 8 from IIEC/FEA witness York's testimony shows the change in the percentage revenue increase to the GDS-1 class increasing from 23.5% (AIC's proposed increase) to 24.2% (IIEC/FEA's proposed increase). IIEC/FEA Ex. 1.0 at 25: Table 8.

IIEC/FEA explain the Company bypassed the technical arguments put forth by IIEC/FEA and assert AIC witness Schonhoff complained of the propriety of the Commission considering another COSS adjustment in the rate case, but none of that dispelled the correctness of IIEC/FEA witness York's many assertions about the P&A method, or the appropriateness of the Design Day Demand. Ameren Ex. 30.0 at 6-7. IIEC/FEA state there is no real debate that the Commission has the authority to consider the impacts of multiple COSS should it choose. IIEC/FEA assert even the Commission noted in its Final Order in Docket 04-0476, that it is unlikely any allocation methodology will be perfect, and so the goal is to select an allocation methodology most likely to be reflective of cost causation and produces fair and reasonable results. *Ameren III. Co.*, Docket No. 04-0476, Final Order at 64 (May 17, 2005).

IIEC/FEA point out Staff supports the Company's use of the P&A method. IIEC/FEA believe Staff only did so because that is the method used by the Company in prior cases. Staff Ex.5.0 at 9. IIEC/FEA claim that Staff witness Boggs did not address the P&A allocation of T&D mains, that is, he never took issue with IIEC/FEA witness York's evidence showing the P&A allocation method of T&D mains does not reflect the way AIC designs its system, or accurately reflect cost causation. IIEC/FEA Ex. 1.0 at 2; IIEC/FEA Ex. 3.0 at 4.

IIEC/FEA state that Staff and AIC incorrectly claim that IIEC/FEA's COSS does not assign any T&D capacity costs to the GDS-5 class and, therefore, it does not reflect cost causation for GDS-5 customers. Staff Ex. 12.0 at 6; Ameren Ex. 42.0 at 5.

IIEC/FEA point out GDS-5 customers are interruptible and interruptible customers will be curtailed on a peak day so there is no reason for AIC to design its T&D main system to meet their peak demand. IIEC/FEA explain AIC did not design its T&D main to meet the GDS-5 class peak demand on a design day, and capacity costs are allocated to this class recognizing their demand on the system.

IIEC/FEA argue that nonetheless, under IIEC/FEA's COSS, GDS-5 customers do receive an allocation of distribution main costs in the customer component of distribution mains. IIEC/FEA assert there is nothing in the record, and Staff and AIC did not point to any evidence, to show the GDS-5 class was excluded from the allocation of distribution main costs.

IIEC/FEA argue the Commission is tasked with setting rates based on sound cost causation principles so that rates are fair and equitable to all customer classes. It is the

IIEC/FEA position that while the Commission has relied on the P&A method in the past, the results of AIC's P&A method are not economically logical. IIEC/FEA asserts this is so because one of the primary drivers for the rate increase is AIC's investment in the T&D systems, including main replacement. The increase in infrastructure cost does not align with AIC's COSS results for the customers that primarily benefit from this infrastructure modernization-the GDS-1 class. IIEC/FEA Ex. 1.0 at 7.

IIEC/FEA explain further, because the P&A method allocates T&D capacity costs partly on volume, the highest increases are for the GDS-4 classes. IIEC/FEA maintain the Design Day Demand allocation for T&D costs and a combination of Design Day Demand and customer allocation of distribution capacity costs, a causal cost driven method, shows a modest increase for the GDS-1 class and a lesser increase for the GDS-4 class. Thus, IIEC/FEA believe the Commission should view AIC's COSS and IIEC/FEA's COSS as representing a range of possible outcomes for all classes, and the spread of AIC's claimed revenue deficiency should fall somewhere in the middle. IIEC/FEA Ex. 1.0 at 24.

d) Commission Analysis and Conclusion

The Commission adopts AIC's and Staff's proposal to continue using the P&A methodology and rejects IIEC/FEA's proposal. IIEC/FEA have failed to show why the Commission should consider a modification of AIC's COSS and they have failed to present evidence or new material facts to show there is a problem with the currently used P&A methodology that warrants a change.

IIEC/FEA proposed two adjustments to AIC's COSS. IIEC/FEA propose that (1) the cost of transmission mains should be allocated using Design Day Demand instead of the P&A allocation factor, and (2) distribution main costs should be classified and allocated using both the demand and customer components. IIEC/FEA propose to do this by allocating customer-related distribution costs on the basis of the number of customers in each class and allocating the remaining portion of costs using Design Day Demand, rather than P&A.

Regarding the Design Day Demand methodology, AIC and Staff assert that this methodology would remove all demand-related T&D main costs from the GDS-5 class. Staff states that since no T&D main costs are assigned to the GDS-5 customer class, the Design Day allocation factor does not reflect cost causation for this customer class because the GDS-5 customers use T&D mains. The Commission agrees.

In past rate case proceedings, the Commission has rejected the use of Design Day Demand without an allocation factor because it only accounts for peak daily therms. The selection of an allocation factor is necessary because it is difficult or impossible to directly assign the costs of T&D among customer classes. The Design Day Demand shifts more costs from the non-residential class to the residential class and it must be noted that the GDS-1 rates are already designed to subsidize the GDS-4 customer class. In light of this, imputing greater costs on the residential customers further frustrates cost causation principles.

Regarding IIEC/FEA's critique of the P&A method, the Commission notes that IIEC/FEA argue that the P&A method results in an over-allocation of T&D capacity costs

to high load factor classes and an under-allocation of T&D capacity costs to low load factor customers. However, the Commission observes that in past, it has rejected the argument that the P&A method resulted in excessive allocation of T&D costs to large volume customers. As previously noted, the GDS-1 rates are designed to subsidize the GDS-4 customer class.

The Commission finds that the P&A method is a better indicator of T&D costs than Design Day Demand because T&D does not solely serve peak demand, but rather operates daily. The P&A method uses Design Day Demand combined with an average component to take into account average daily therms. This average component “recognizes the economies of scale associated with serving larger customers.” Docket No. 04-0467 at 65. Further, as the Commission held in Docket No. 15-0142, the P&A methodology produces “fair and reasonable results, and properly emphasizes the role of year-round demands in shaping T&D investments.” Docket No. 15-0142, Order at 98.

The Commission also finds that IIEC/FEA’s proposal to include more than one allocation method is not supported by the record. The P&A method has been found to best reflect cost causation for all rate classes and has been approved by the Commission in AIC’s last four rate cases (Docket Nos. 11-0282, 13-0192, 15-0142, and 18-0463). While IIEC/FEA have proposed a slight modification to its Design Day Demand proposal offered in past cases, there is not sufficient evidence to adopt IIEC/FEA’s proposal and discontinue use of the P&A method.

2. Amount of 2 Inch T&D Mains Allocated to GDS-4

a) AIC’s Position

AIC states that in direct testimony, IIEC/FEA witness York asserts that AIC’s investment in mains over the past ten years have been driven by the replacement of 2-inch steel distribution mains with 2-inch plastic distribution mains and asserts that the 2-inch plastic distribution mains cannot safely provide the volume of gas needed to serve GDS-4 customers, and therefore it is not equitable that GDS-4 customers pay an increase in rates that support the investment in delivery of 2-inch mains.

AIC argues that its ECOSS does not disproportionately allocate the cost of 2-inch mains to GDS-4 customers and the Company does in fact provide service to GDS-4 customers via 2-inch mains that operate at a pressure of 60 psig and below. AIC maintains that the mains that operate at 60 psig and below are considered low pressure mains in AIC’s ECOSS. AIC states that IIEC/FEA witness York asserts that the GDS-4 Rider T>60 customers are adversely affected by the increase of distribution main replacement over the past 10 years, but IIEC/FEA witness York fails to mention that AIC’s ECOSS recognizes that the GDS-4 customers that are served by mains operating over 60 psig are not allocated the portion of costs that functionalize as low pressure distribution.

AIC explains that the increase in the installation of 2-inch main pipe over 10 years is not the primary driver of the requested rate increase. Further, AIC explains that the total feet of 2-inch main installed does not directly correlate with the total investments made in the system over the time period. In fact, according to AIC, the cost to install

twenty-one feet of 2-inch PE distribution main is equal to the cost to install one foot of 6 inch steel transmission main.

AIC notes that GDS-4 Rider T>60 customers do not incur costs related to the 2-inch PE main investment on the low-pressure distribution systems. AIC argues the Company's investment in Transmission main is currently much higher than the investment in Distribution main, and the investment in 2-inch PE low pressure distribution main is not a main driver in the requested rate increase when compared with other costs.

AIC explains that GDS-4 Rider T>60 customers are currently being served from high pressure distribution systems and those customers should be allocated a portion of the high pressure distribution system cost. AIC asserts further, the 2021 future test year adjustments do not include any proposed projects installing 2-inch or less plastic main within AIC's high pressure distribution system.

AIC notes that while there exist some 2-inch or less plastic main in Transmission and High Pressure Plant, the impact to the GDS-4 Rider T>60 psig is negligible for transmission plant and appropriate for high pressure distribution plant. Thus, AIC argues that since it demonstrated that only 0.404% of the cost of transmission plant is related to 2-inch PE mains, and there are GDS-4 Rider T>60 customers served by high pressure distribution mains, IIEC/FEA's assertion that AIC's investment in 2-inch PE main is disproportionately causing a rate increase in the GDS-4 Rider T>60 class should be dismissed.

In her rebuttal testimony, IIEC/FEA witness York also proposes that if the Commission rejects her recommendation to reallocate the cost of 2-inch and smaller plastic mains to customers in the GDS-4 Rider T>60 class, the Commission should order AIC to work with stakeholders and conduct a study for the next rate case that demonstrates the cost of two-inch and smaller plastic mains allocated to the GDS-4 Rider T>60 class.

AIC argues that the Commission should reject IIEC/FEA witness York's proposal for an order directing AIC to work with stakeholders to conduct a study for the next rate case examining the cost of 2-inch and smaller plastic mains allocated to the GDS-4 Rider-T>60 class because the information requested by IIEC/FEA has already been included in this proceeding and the amount is immaterial.

b) IIEC/FEA's Position

IIEC/FEA argue that AIC's class COSS has faults, one of which is the inclusion of 2-inch and smaller main in the allocation of T&D costs to the larger customer classes, including the GDS-4 class. IIEC/FEA state the evidence proves the inclusion of the 2-inch and smaller main cost has an impact on GDS-4 rates.

IIEC/FEA state the remedy is to accept their proposed compromise using the results of AIC's COSS and IIEC/FEA's adjusted COSS results, as bookends for a range of possible outcomes, and adopt IIEC/FEA's rate design proposal as the means to mitigate the impact of this unfair allocation of cost to the GDS-4 class. IIEC/FEA also recommend AIC be ordered to conduct a study by which to provide better data to determine the amount of 2-inch and smaller main cost being allocated to the larger customer classes.

IIEC/FEA assert that IIEC/FEA witness Collins explained, “The Company allocates the costs of these mains [2-inch] to all customers, including the customers who don’t receive delivery service from mains 2-inch and smaller.” IIEC/FEA Ex. 2.0 at 7. IIEC/FEA explained this is not in dispute and IIEC/FEA witness York suggested the majority of activity related to T&D mains has been driven by the replacement of steel distribution mains, sized 2-inch and less with plastic mains of the same size. IIEC/FEA witness York stated it was an optic relative to one of the primary drivers of AIC’s increase in cost of service due to the P&A method. IIEC/FEA Ex. 3.0 at 13. IIEC/FEA witness York contended it is not economically logical or equitable that large industrial customers pay a disproportionately higher increase in rates to support cost of service increases, that are largely caused by increases in delivery mains too small to use, and to safely service this class. IIEC/FEA Ex.1.0 at 10-11.

IIEC/FEA state the record proves very little, if any, of the costs of 2-inch or less main should be allocated to the larger industrial customers. IIEC/FEA contend AIC cannot operate a 2-inch or smaller main safely at the operating pressure required in order to deliver all the volumes of gas to these large customers consume. IIEC/FEA Ex. 2.0 at 6. IIEC/FEA state it is also Mr. Collins’ expert opinion that 2-inch or smaller mains are not used to deliver the large volumes of gas to customers the size of IIEC members and the primary reason for the installation of 2-inch and smaller plastic main has been to replace the system of steel mains that provide service to residential customers. *Id.* at 6.

IIEC/FEA note the overwhelming majority of new plastic main is 2-inch and smaller is being utilized almost entirely by the over 742,521 residential customers and not by the 151 largest customers, including the IIEC companies participating in this case. IIEC/FEA continue, stating, despite the fact large customers cannot be served by the 2-inch or less main and the recent replacement of these mains is for the benefit of these residential customers, AIC allocates the costs of these mains to all customers—including GDS-4 customers. IIEC/FEA aver the logical and correct position is that the GDS-4 class should be allocated little, if any, of the cost of 2-inch or less main. IIEC/FEA Ex. 1.0 at 10-11.

IIEC/FEA state the wrongful allocation of these 2-inch or less pipe to customers that do not use these mains is exacerbated by allocating costs using class volumes or average demands (P&A method), which the Company confirmed in response to Data Request IIEC 3.3. IIEC/FEA Ex. 2.0 at 7. IIEC/FEA note this means more costs are allocated to large users only because of the volume of gas they have delivered, and not because of having to ensure adequate capacity is available for meeting their Design Day Demands. IIEC/FEA state that in seeking to determine how much 2-inch or less main was impacting GDS-4 rates, IIEC/FEA witness York relied on historical information on changes in main length from AIC’s filings from 2010 through 2018, and AIC’s response in a data request.

IIEC/FEA state as shown by their witness York, the majority of the change in main length over the last ten years has been associated with distribution mains sized 2-inch or less, ranging from the low of near 53% to as high as 88% and more recently, in 2018 and 2019, nearly 80% of the change in main length has been associated with small distribution main sized 2-inch or less. *Id.* at 9; IIEC/FEA Ex. 2.0 at 6.

IIEC/FEA explain that IIEC/FEA witness York also relied on other AIC data to prove there are 2-inch and smaller sized mains in AIC's transmission and high-pressure distribution systems. IIEC/FEA assert AIC's response to Data Request IIEC 7.12 shows that the plastic and steel mains ranging from half an inch to 2-inch are included. IIEC/FEA Ex. 3.0 at 14. Similarly, IIEC/FEA argue AIC's response to another data request acknowledges there is some 2-inch main installed on gas systems operating above 60 psi, and that there is a small amount of 2-inch plastic pipe in the Quincy and Alton areas that operate at pressures up to 100 psi. *Id.* at 15. Thus, IIEC/FEA assert AIC is investing in its T&D system, which includes 2-inch or smaller main, the cost of which is being allocated to all customers.

IIEC/FEA state it is clear from the evidence that large customers, including the GDS-4 class, should not be allocated much, if any, 2-inch and smaller sized mains. IIEC/FEA aver it is equally clear that some amount of the 2-inch and smaller sized mains is wrongfully being allocated to these customers.

IIEC/FEA note AIC declined to provide information showing the amount of investment in its high-pressure distribution system by main size, but did provide information for the distribution system as a whole (both high pressure and low-pressure mains), showing \$62.2 million included in the non-unitized category absent information on the sizes or operating pressures of mains. IIEC/FEA point out AIC identifies a future test year adjustment of \$92.2 million for its distribution system but does not break this amount out by main size or pressure. IIEC/FEA Ex. 3.0 at 15.

IIEC/FEA state as of September 2019, investment in transmission mains sized 2-inch and less amounted to about \$23.6 million. IIEC/FEA argue that AIC's data also includes about \$225 million of assets not unitized, which means there is a lag between when assets are placed in service and when assets are unitized. Thus, IIEC/FEA point out it is unclear what portion of investment in the non-unitized category is associated with transmission mains sized 2-inch or less. IIEC/FEA state AIC's data also shows a future test year adjustment for its transmission system of about \$103.8 million, but does not break this investment out by main size. IIEC/FEA Ex. 3.0 at 14.

IIEC/FEA state that given the lack of firm and reliable data from the Company, IIEC/FEA recommended the Commission order AIC to work with stakeholders, including parties in this case, to conduct a study for the next rate case that provides sufficient detail to demonstrate the actual cost of 2-inch and smaller plastic mains allocated to the GDS-4 Rider T >60 class. IIEC/FEA Ex.3.0 at 16. IIEC/FEA state in the interim, the Commission should accept their proposed compromise using the results of AIC's COSS and IIEC/FEA's adjusted COSS results, and adopt IIEC/FEA's rate design proposal as the means to mitigate the impact of this unfair allocation of cost to the GDS-4 class.

In response to AIC's argument about the 2-inch mains, IIEC/FEA argue that it appears to be the AIC position the IIEC/FEA believe that investment in 2-inch mains is the main driver for the rate increase in this case, but that is not their position. IIEC/FEA explain that IIEC/FEA witness York never testified the improper allocation of the 2-inch and less pipe is the main driver for the rate increase. IIEC/FEA state her position was, "Because GDS-4 Rider T >60 customers do receive an allocation of investment in transmission and high-pressure distribution mains, which is undisputed, the investment

in small plastic main does impact their rates. However, AIC has not provided the detailed information that would allow parties to determine the extent to which investment in small plastic mains is impacting the GDS-4 Rider T >60 263 class.” IIEC/FEA Ex. 3.0 at 13-14. IIEC/FEA state IIEC/FEA witness York did testify that the entirety of the Company’s investment in the overall T&D system was a major reason for the increase in rates. IIEC/FEA also state IIEC/FEA witness York’s testimony was that the Company is switching out a great deal of 2-inch steel main for plastic, that AIC has invested heavily in this endeavor, that this investment is intended to serve smaller customers and not the larger customers, and that the larger customers should not bear the costs.

IIEC/FEA argue AIC cannot tell the Commission based on this record how much of the cost of the 2-inch and less main will be allocated to the GDS-4 Rider T >60 class or provide a meaningful breakdown of the T&D plant for purposes of a proper cost allocation. IIEC/FEA assert that they are certain the GDS-4 Rider T >60 class is being allocated a share of transmission and high pressure distribution mains, including small mains that are part of the transmission and high pressure distribution system, and that is inappropriate. IIEC/FEA Ex. 3.0 at 15.

IIEC/FEA note that AIC alleges the cost impact to the GDS-4 class is “negligible” for transmission plant and appropriate for high pressure distribution plant, and AIC later adds, ...the amount of plant is “immaterial”. AIC IB. at 153. IIEC/FEA say though AIC has found the amount of 2-inch mains allocated to the GDS-4 class “negligible” and “immaterial”, is hardly comforting, particularly in light of the mishmash of data presented to the Commission in this docket. IIEC/FEA argue that its witness York, an expert in utility cost of service, could not discern the amount of dollars wrongly being charged the GDS-4 class based on the indecisive data provided by the Company and neither could the Company, but it is apparent millions of dollars are potentially at stake.

IIEC/FEA argue that 2-inch and smaller plastic main is included in the transmission system and high pressure distribution systems, as admitted by AIC, and as such it impacts the GDS-4 Rider T >60 class, because these customers are receiving an allocation of transmission mains and high pressure distribution mains. IIEC/FEA assert AIC cannot or will not provide sufficient detail with regard to the allocation of 2-inch and smaller main, and customers in the GDS-4 Rider T >60 class should not be penalized. IIEC/FEA state this inability to know how much of the 2-inch and smaller main is wrongfully being allocated to the GDS-4 class, is but one more reason why the Commission should order the study recommended by IIEC/FEA to determine how much of this main is being allocated to the GDS-4 class.

c) Commission Analysis and Conclusion

IIEC/FEA argue that AIC’s class COSS incorrectly includes 2-inch and smaller main in the allocation of T&D costs to the larger customer classes, including the GDS-4 class. IIEC/FEA state the evidence proves the inclusion of the 2-inch and smaller main cost has an impact on GDS-4 rates. It is their position that the remedy to this situation is to accept their proposed compromise using the results of AIC’s COSS and IIEC/FEA’s adjusted COSS results, as bookends for a range of possible outcomes, and adopt IIEC/FEA’s rate design proposal as the means to mitigate the impact of this unfair allocation of cost to the GDS-4 class. IIEC/FEA also recommend AIC be ordered to

conduct a study to provide better data to determine the amount of 2-inch and smaller main cost being allocated to the larger customer classes.

AIC responds stating that its COSS does not allocate costs for low pressure distribution to the GDS-4 Rider T>60 customers. AIC also states that GDS-4 Rider T>60 customers are allocated a portion of the high pressure distribution system cost because they are served by high pressure distribution systems, which include a small amount of 2-inch main. The Company also urges the Commission to reject IIEC/FEA's proposal for an order directing AIC to work with stakeholders – including parties intervened in this case – to conduct a study for the next rate case examining the cost of two-inch and smaller plastic mains allocated to the GDS-4 Rider-T>60 class because the information requested by IIEC-FEA has already been included in this proceeding and the amount is immaterial.

The Commission agrees with AIC that IIEC/FEA failed to demonstrate that the cost to GDS-4 Rider T>60 customers for the amount of 2-inch main in these systems is not negligible, as AIC suggest. Additionally, IIEC/FEA failed to show how AIC's method of allocating costs for low and high pressure systems is unreasonable or results in improper allocation of costs. Moreover, it appears AIC has provided sufficient information in this proceeding regarding the cost of the allocation of 2-inch main cost to GDS-4 Rider-T>60 customers and another study to re-examine this information is unnecessary.

The Commission finds that AIC has provided a sufficient explanation to support charging its GDS-4 Rider T>60 customers for 2-inch main and IIEC/FEA have failed to disprove this assertion or introduce sufficient evidence to support a separate study. Therefore, the Commission rejects IIEC/FEA's proposal.

VI. REVENUE ALLOCATION

A. Contested Issues

1. Revenue Constraint Factor

a) AIC's Position

AIC states that consistent with prior Commission direction, Ameren is proposing in this case to apply a revenue allocation constraint that would restrict rate increases incurred by each class to 1.5 times the overall system average increase. As described by AIC witness Goerss, "[t]he application of rate increase constraints serve to limit customer bill impacts." Ameren Ex. 10.0 at 11. IIEC/FEA witness York disagrees with the Company's proposal and recommends that the Commission adopt her recommendation. IIEC/FEA witness York asserts that the Company's proposal for the GDS-4 class is excessive and instead recommends correcting the COSS to ensure that the GDS-4 class would see an average increase of 65%. She specifically proposes a flat 24.2% increase to all classes. IIEC/FEA witness York continues that for GDS-1 class, it would be a \$71.1 million increase or \$0.21 per month per customer.

However, according to Ameren's ECOSS, the GDS-4 class would need an increase of 115% to achieve an equal rate of return for AIC overall. Moreover, IIEC/FEA witness York's work papers, specifically Table 6, shows a weighted average rate increase to the GDS-4 class of 65%, under the IIEC/FEA adjusted ECOSS. AIC explains that this only further reiterates the point that the GDS-4 class as a whole is paying far less than cost-based rates would require, under either AIC's or IIEC/FEA's COSS model. On the

other hand, AIC's 1.5 constraint method would result in only a 36% increase to GDS-4 customers, which is far below what even the IIEC/FEA COSS method would determine is appropriate.

AIC notes that IIEC/FEA witness York's proposal would implement equal percentage increase for all rate classes. AIC argues that when examined in detail, it results in GDS-4 customers paying a disproportionately lower rate than other customers. AIC explains that the 1.5 times constraint that AIC uses already reduces the GDS-4 class' rates to a level far below actual cost-based rates, as measured by AIC or IIEC/FEA's ECOSS. AIC asserts that IIEC/FEA witness York's proposal then further reduces the increase for the GDS-4 class by setting the rate increase percentage equal for all customer classes, which means that GDS-4 customers would pay a lower percentage of their cost of service under IIEC/FEA witness York's proposal while other customer classes, such as residential, would have to pick up the difference. More specifically, when quantified, GDS-1 customers would see an increase in rates by \$2.7 million, while GDS-4 customers would see a reduction of \$2.6 million.

Additionally, IIEC/FEA is proposing no further progress towards moving to cost based rates. AIC on the other hand, proposed to maintain its prior commitment to achieve rate uniformity in this proceeding and make moderate progress towards cost-based rates. Moreover, AIC's proposed 1.5 times constraint method, which it already uses, promotes gradualism and reduces the rate shock for GDS-4 customers associated with moving to full cost of service.

AIC notes that Staff agrees with the Company in recommending that IIEC/FEA witness York's proposal be rejected in favor of the 1.5 times revenue allocation constraint proposed by the Company. As described by Staff witness Boggs, "[t]his 1.5 multiplier constraint threshold has been approved by the Commission in each of the Company's last two rate cases (Docket Nos. 15-0142 and 18-0463) and the Commission has deemed it a reasonable and gradual design of rates to advance revenues recovered from any class toward full cost of service recovery." Staff Ex. 12.0 at 9. Furthermore, AIC explains that Staff asserts that if the Commission approves IIEC/FEA witness York's proposal, the over-recovery of revenues from other classes, most generally the residential customer class, will be prolonged and there will be no additional movement towards full cost of service; and such a rate design would constitute a move away from full cost of service recovery by rate class.

AIC concludes that the mitigation proposed by AIC was approved for use by the Commission in prior Ameren natural gas cases, Docket Nos. 13-0192, 15-0142 and 18-0463. IIEC/FEA witness York has presented no evidence that would provide a sound basis for the Commission to disturb precedent on this issue. AIC asserts that as concluded by Staff, IIEC/FEA witness York's proposal would constitute a move away from full cost of service recovery by rate class, while AIC's proposal maintains its prior commitment to achieve rate uniformity and make moderate progress towards cost-based rates, while also being consistent, progressive, and allows a gradual path to eventual full cost recovery from each respective service class. AIC asserts that its mitigation constraint should be approved by the Commission, as it has been for the past several rate cases.

b) Staff's Position

Staff argues that the Commission should approve the Company's proposal to limit rate increases to any one class to 1.5 times the overall rate increase approved in this case. Staff avers that the Company's proposal is consistent, progressive, and allows a gradual path to eventual full cost recovery from each respective service class.

Staff proffers that IIEC/FEA witness York takes issue with the Company's proposed 1.5 times the overall increase limit, arguing that it would permit a substantial increase for the GDS-4 class. IIEC/FEA Ex. 1 at 24. Staff states that IIEC/FEA witness York argues that her proposed equal percentage increase would better reflect gradualism in moving the GDS-4 class toward paying its full cost of service. *Id.*

Staff opines that there is no dispute about whether the GDS-4 class should move to full cost of service recovery so that it is no longer subsidized by other classes, particularly the residential class, but rather the dispute is about how long it should take. Staff avers that the Company's proposal would continue the current pace that has been approved by the Commission and IIEC/FEA's proposal would slow it down.

Staff asserts that the Company proposes to continue moving toward rates that recover each customer class's revenue requirement, assuming an equalized rate of return as determined by the gas COSS. Ameren Ex. 16.0 at 10. Staff explains that at current rates, Ameren Ex. 16.2 shows that the GDS-4 class recovers only 46.61% of the cost to serve the class. Staff maintains that the Company has recognized that increasing rates enough to produce revenues adequate to recover full costs to service the GDS-4 class would put a substantial burden on the ratepayers in this class. Staff opines that in the interest of gradualism, the Company proposes to constrain increase to any one class to 1.5 times the overall proposed system increase. *Id.* Staff argues that this 1.5 multiplier constraint threshold has been approved by the Commission in each of the Company's last two gas rate cases (Docket Nos. 15-0142 and 18-0463) and the Commission has deemed it a reasonable and gradual design of rates to advance revenues recovered from any class toward full cost of service recovery.

Staff states that in this rate case, the Company's proposed increase of approximately 24% would limit any one class to an approximate 36% rate increase and the two classes that face this increase threshold are the GDS-4 and GDS-5 service classes. Staff explains that breaking down the GDS-4 class further, Ameren Ex. 16.2 shows that GDS-4 Rider S <60 customers would receive a 13.5% rate increase; GDS-4 Rider S >60 would receive a 9.61% rate decrease; and GDS-4 Rider T <60, GDS-4 Rider T >60 <30,000 MDCQ and GDS-4 Rider T >60 >30,000 MDCQ would all receive the maximum proposed rate increase of approximately 36%. Staff states there appears to be a clear distinction in the cost of service recovery between GDS-4 Rider S customers and GDS-4 Rider T customers.

Staff argues that if the Commission approves IIEC/FEA witness York's proposal for a 24% rate increase for each customer class, the over-recovery of revenues from other classes (most generally the residential GDS-1 class) will be prolonged and no additional movement toward full cost of service recovery will occur until at least Ameren's next general natural gas rate case is completed. Staff maintains that such a rate design would constitute a move away from full cost of service recovery by rate class.

Staff avers that the Company's proposal to constrain rates to 1.5 times the system average increase in this case will still cause an over-recovery of costs to serve the residential class, but it continues to make progress toward full cost of service recovery from the GDS-4 class, whereas IEC/FEA witness York's proposal for equal percentage rate increases would unfairly continue the subsidies that the residential class provides to the GDS-4 class.

Staff asserts that for all these reasons, the Commission should approve the Company's proposal to limit rate increases to any one class to 1.5 times the overall rate increase approved in this case.

c) AG's Position

The AG maintain its support of the 1.5 constraint factor proposed by Ameren to limit the increase to customers as a result of Ameren's proposals to move all customer classes to cost of service.

d) IIEC/FEA's Position

IIEC/FEA acknowledge AIC has limited the revenue allocation to any one class at 1.5 times the system average increase. IIEC/FEA Ex. 1.0 at 4. IIEC/FEA argue that for the GDS-4 class, applying AIC's 1.5 times factor results in a 35.9% increase, an increase driven by a flawed COSS. IIEC/FEA note Staff supported the Company as well.

IIEC/FEA state they oppose the 1.5 times the system average increase and recommend an across the board equal percentage increase. IIEC/FEA argue AIC's revenue constraint factor is insufficient in mitigating the rate impact for certain classes of customers, and in particular the GDS-4, Rider T class.

IIEC/FEA argue that despite the AIC rate limiter of 1.5 times the system average, some of the Company's largest customers in Rate Zone III (GDS-4, Rider T, > 60 psig, greater than 30,000 MDCQ), will see increases in excess of 60% in base rate revenues. IIEC/FEA Ex. 2.0 at 9. IIEC/FEA explain that underlying these high percentages and excessive increases in present revenues required for GDS-4, Rider T customers, is the flawed P&A cost allocation method. According to IIEC/FEA, had AIC used a more appropriate COSS, the increases to the GDS-4, Rider T group would not be so punitive and the 35.9% GDS-4 class average increase would be less, and would not have compelled IIEC/FEA to offer a different system average increase factor.

IIEC/FEA recommend that all classes receive an equal percentage increase to mitigate the substantial increases that would be required for many classes to reach cost of service. IIEC/FEA explain, all rate classes under IIEC/FEA's equal percentage spread realize a 24.2% increase assuming the Company receives its full requested rate increase. IIEC/FEA state the GDS-1 class sees a slight increase from 23.8% (using AIC's 1.5 constraint factor) to 24.2% (using IIEC/FEA's 1.0 constraint factor). IIEC/FEA argue that assuming AIC receives 100% of its requested revenue requirement, the GDS-1 class would absorb an additional \$1.9 million in revenue responsibility, or 21 cents per customer per month. *Id.* at 26. IIEC/FEA argue that, assuming AIC's rebuttal revenue requirement, the impact to a residential customer would even be less and is literally pennies per month.

IIEC/FEA argue that IIEC/FEA witness York's adjustments do not eliminate all the imperfections associated with the P&A method and the GDS-4 class would still see an

average increase of 65% or 2.7 times the system average increase. However, IIEC/FEA argue that under both approaches, gradualism continues to be appropriate. IIEC/FEA Ex.1.0 at 24; IIEC/FEA Ex.3.0 at 17.

IIEC/FEA explain the rate impacts associated with AIC's COSS, rate uniformity proposal and 1.5 revenue constraint, compel IIEC/FEA to make the system constraint offer they do because AIC's P&A method and other rate related positions would be irreparably damaging to the GDS-4 subclass.

In response to AIC, IIEC/FEA suggest the Company offered limited rebuttal to IIEC/FEA's equal percentage increase, claiming it would result in GDS-4 customers paying disproportionately lower rates than other customers. Ameren Ex. 31.0 at 4. IIEC/FEA opine that AIC witness Goerss' opinion is in error.

IIEC/FEA state for the GDS-4 class on average, IIEC/FEA's adjusted COSS indicates an increase of 65% would be required to reach parity and the equal percentage increase of 24.2% moves the GDS-4 class over one-third of the way to parity. IIEC/FEA argue that in stark contrast, AIC's COSS calls for an increase of 115% for this class to reach parity. IIEC/FEA state AIC's proposed increase to the GDS-4 class of 35.6% only moves that class to less than one-third of the way to parity. IIEC/FEA argue that their adjusted COSS provides a more accurate measure of the cost to serve the GDS-4 class, and the proposed equal percent increase represents a greater movement toward parity than the Company's COSS and proposed increase. IIEC/FEA Ex. 3.0 at 17.

IIEC/FEA state that in an effort to rebut IIEC/FEA's positions, AIC witness Goerss relied on the hearsay of a Staff witness's testimony from the last AIC gas rate case in 2018 in support of the 1.5 times constraint. Ameren Ex. 31.0 at 5. IIEC/FEA aver that it matters little what Staff may have stated in testimony three years ago, and the Commission made no finding in the case in support of that witness's testimony, and more importantly, of any preferred system revenue spread approach. Nonetheless, IIEC/FEA explain the 2018 COSS and rate design were the product of a Stipulation that by its terms, was not to be used in this proceeding for any reason.

IIEC/FEA assert that neither AIC nor Staff have shown AIC's COSS reflects cost causation, and accurately measures the cost of service for each rate class. IIEC/FEA maintain that T&D costs are not fairly allocated to the customer classes, the result being these costs are significantly overallocated to the GDS-4 class. IIEC/FEA state neither AIC nor Staff have shown that AIC's COSS results produce the appropriate target revenues for each class's rate design. IIEC/FEA Ex. 3.0 at 18. IIEC/FEA explain AIC and Staff arguments are only that the Commission used the 1.5 the system average increase in prior cases, and so it should be applied in this proceeding.

IIEC/FEA assert that comparing IIEC/FEA's proposed increase of 24.2% to the rate changes indicated by AIC's and IIEC/FEA's adjusted COSS models for each customer class highlights how the equal percentage increase across classes reflects a compromise based on the results of both COSS models.

IIEC/FEA argue that under their recommended equal percentage increase, most customer classes are closer to parity as measured by one COSS or the other, and/or are better off under an equal percentage increase than under AIC's 1.5 times system average

increase constraint. Additionally, IIEC/FEA aver that the largest increases are mitigated, and no class receives a rate decrease. IIEC/FEA conclude their recommended revenue spread is an appropriate compromise based on the results of both COSSs, makes a gradual movement toward cost of service, while also preventing rate shock.

IIEC/FEA argue that they demonstrate that based on this record, and not the others from prior cases, IIEC/FEA's adjusted COSS reflects cost causation and the way AIC designs its T&D systems – a point IIEC/FEA argue has not been disputed by AIC or Staff. IIEC/FEA state that their equal percentage increase to all classes represents a compromise revenue spread based on the results of both COSS models, the need for gradualism, and prevention of rate shock.

In response to Staff, IIEC/FEA argue that Staff's reply to IIEC/FEA's proposal was as limited as the Company's. IIEC/FEA state that Staff witness Boggs' principle argument is that the revenue allocation follows the approach from the 2015 and 2018 rate cases. Staff Ex. 5.0 at 15-16. According to IIEC/FEA, in doing so, he ignored or overlooked the 2018 case settled on the COSS and rate design, and so there was no finding by the Commission as to a specific revenue allocation. IIEC/FEA argue it is only this record of evidence that matters, and the circumstances in 2020 are vastly different than they were years earlier.

IIEC/FEA state Staff witness Boggs' focus on the past two cases overlooked the evidence in this case. IIEC/FEA argue that AIC has not shown that its COSS is reflective of the way it designs its T&D systems or accurately assigns costs to cost causers. IIEC/FEA argue therefore, AIC's COSS should not solely be relied upon when making a determination on how to spread the revenue deficiency. IIEC/FEA state to do so only exacerbates the cost allocation errors. IIEC/FEA maintain that its adjusted COSS reflects the way AIC designs its T&D systems, and more accurately assigns costs to cost causers. Therefore, IIEC/FEA believe it should also be considered by the Commission when determining an appropriate revenue spread. IIEC/FEA Ex. 3.0 at 5.

IIEC/FEA note the only other point offered by Staff witness Boggs (as did AIC) was the residential class would pay a subsidy with a 1.0 system average increase. Staff. Ex. 12.0 at 174-179. Yet, according to IIEC/FEA, the "subsidy" is a function of a poorly applied and devised COSS and the resulting impact is but pennies a month compared to the Company's COSS impact. IIEC/FEA argue, it is difficult to comprehend and reconcile the pennies impact to a GDS-1 customer compared to a 60% or greater increase for multiple customers in the GDS-4 class.

IIEC/FEA state it is reasonable to support an equal percentage increase for all classes, taking into account the undue impact to the GDS-4 subclass, where the proposed rates are not cost based in the first instance.

e) Commission Analysis and Conclusion

The Commission declines to adopt IIEC/FEA's proposal for an equal percentage increase. The Commission finds the revenue constraint factor proposed by AIC to restrict rate increases incurred by each class to 1.5 times the overall system average increase is reasonable. This revenue constraint factor is consistent with prior Commission decisions

and the Commission notes that all of the parties to this case agree with this method, except for IIEC/FEA.

The evidence presented by IIEC/FEA does not show that their recommendation is more closely aligned with the best interest of all the rate classes than AIC's currently used revenue constraint factor. IIEC/FEA also fail to show that their proposed method of increase would not adversely impact residential customers or progress adequately towards rate uniformity and cost-based rates.

The Commission is also not convinced that the potential benefit of IIEC/FEA's proposed method to larger rate classes would outweigh the potential cost to residential customers. Thus, the Commission agrees with the continued use of the Company's proposed revenue constraint factor and finds that any increase allocated to customers shall be restricted to 1.5 times the overall system average increase.

VII. RATE DESIGN

A. Uncontested Issues

1. Rate Uniformity

AIC explains that it has made tremendous progress towards uniformity of Commission-approved rates within and across rate zones since the Commission's decision in Docket No. 10-0517. As a result of AIC's past two gas rate cases, Docket Nos. 15-0142 and 18-0463, over 90% of gas revenue is generated under uniform rates, representing 99% of customer bills collected under uniform rates. AIC indicates that currently, only GDS-4 Demand Charges for Rider T>60 psig and GDS-5 Adjusted Winter Demand Charges remain non-uniform. However, AIC explains, over its past three gas rate cases, Dockets Nos. 13-0192, 15-0142, and 18-0463, AIC has eliminated the 2,000,000 Therm Rider T Demand Charge tier, specific to Rate Zone II, in accordance with the Commission's approval of AIC's proposal in Docket No. 13-0192. AIC explains that the final step of its proposal occurred in Docket No. 18-0463, in which the Commission approved rate design that allowed uniform rates with the exception of GDS-4 Demand charges for Rider T>60 psig. Since the GDS-5 adjusted Winter Demand Charges are set equal to GDS-4 Demand Charges, once those Demand Charges are set to uniform rates, AIC asserts that the GDS-5 Adjusted Winter Demand Charges will also become uniform.

AIC also proposed that it be permitted to file a single revenue requirement and a single set of embedded cost of service study schedules in all future proceedings. Staff recommended that the Commission approve AIC's proposal to have full rate uniformity in each respective customer class and approve Ameren's proposal to file a single set of rate schedules in its future general rate cases. Staff testified that "this is the appropriate time for the Company to achieve full rate uniformity."

The Commission finds that AIC should be permitted to file a single revenue requirement and a single set of ECOSSE schedules in all future proceedings and further finds that AIC's proposed movement toward a single revenue requirement and complete rate uniformity is uncontested and reasonable, and it is hereby approved.

2. Rate Subclass ECOSS Detail

AIC proposed modifications to the structure of the ECOSS model in this proceeding by developing the ECOSS with GDS subclasses. AIC explains that it is developing its ECOSS with this subclass detail so that the cost delineation between Riders S and T customers could be developed since rate uniformity was established. In addition, AIC developed the subclass GDS classes in the ECOSS because of the stipulation reached between the parties in Docket No. 18-0463, and the cost detail for GDS-4 will provide a basis for Demand Charge determinations by the subclasses.

AIC explains that non-residential rate classes except GDS-4 were split into two-subclasses, differentiated by supply (Rider S and Rider T). The GDS-4 rate class was split into five sub-classes. The GDS-4 subclass was developed for customers served at <60 psig and =<60 psig along with the Rider T customers having additional subclass cost detail for customers served at =>60 psig with <30,000 and =>30,000 MDCQs.

On rebuttal, neither Staff nor the AG objected to AIC's proposed modifications to the structure of the ECOSS model in this proceeding by developing the ECOSS with GDS subclasses.

The Commission finds that AIC's proposed modifications to the ECOSS model through the development of GDS subclasses is reasonable and uncontested; it is hereby approved.

3. Use of SFV Design/Setting the Customer Charge in GDS-1 and GDS-2

AIC explains that currently, it is collecting 60% of its residential (GDS-1) and 55% of its small non-residential (GDS-2) revenue requirements through a fixed monthly Customer Charge, with the remaining revenue requirement collected through a volume-based Distribution Delivery Charge (per Therm), as ordered by the Commission in Docket No. 18-0463. AIC explains that the Straight-Fixed Variable ("SFV") rate design recovers a portion of the distribution delivery costs above those considered "customer-related" through the fixed monthly Customer Charge. AIC maintains that its ECOSS shows that 49% of GDS-1 and 38% of GDS-2 revenue requirement is classified as "customer-related."

AIC proposes that Customer Charges from GDS-1 and GDS-2 customers be set to recover the "customer-related" costs as determined through AIC's ECOSS, with the remaining costs recovered through the volumetric Distribution Delivery Charge (per therm) for GDS-1 and GDS-2. AIC explained that this results in the elimination of the SFV rate design from GDS-1 and GDS-2 in this proceeding. Staff recommends that the Commission approve AIC's proposal because the proposal allows the customer more control of their monthly gas bill with the option to curtail usage and conserve energy.

The Commission finds that AIC's proposed elimination of AIC's SFV rate design for GDS-1 and GDS-2 customer classes is uncontested and reasonable, and it is hereby approved.

4. Study to Mitigate Rate Impacts to Larger GDS-4 Rider T Customers

In its rebuttal testimony, Staff noted that because there is a gap in cost recovery between GDS-4 Rider S customers and GDS-4 Rider T customers, as well as bill impact concerns between the two, Staff recommended the Commission order AIC to provide in its next rate case a COSS that potentially places GDS-4 Rider S and GDS-4 Rider T customers into two separate service classifications. In its surrebuttal testimony, AIC accepted Staff's recommendation to assess the potential for a different COSS prior to the next general gas rate case that could potentially place the GDS-4 Rider T customers into different service classifications that could potentially lessen bill impacts to GDS-4 Rider T customers.

The Commission finds that Staff's recommendation, to which AIC agreed, is reasonable and uncontested, and it is hereby approved. Accordingly, the Commission directs AIC to provide in its next rate case a COSS that potentially places GDS-4 Rider S and GDS-4 Rider T customers into two separate service classifications.

B. Contested Issues

1. Charges for GDS-4 Rider T

a) AIC's Position

AIC notes that in its direct testimony, AIC proposed Customer Charges for the GDS-4 rate class to be increased by \$50.00 per month. AIC explains that the majority of the Demand Charges for GDS-4 are uniform with the exception of Rider T customers with service >60 psig. Based on the stipulation in Docket No. 18-0463, AIC proposes uniform Demand Charges for GDS-4 tiers <30,000 MDCQ and =>30,000 MDCQ. Currently, non-uniform Demand Charges for Rate Zone II for Rider T is greater than 60 psig at both tiers.

IIEC/FEA witness Collins asserts in his rebuttal testimony that the Commission should recommend separate demand charges for all three rate zones regarding the GDS-4 Rider T >60 psig class since the three rate zones were designed separately based on costs specific to serving that respective zone's customers.

In Docket No. 10-0517, AIC notes that the Commission first began to contemplate rate consolidation across rate zones. In Docket No. 18-0463, the Commission's Final Order reinforced the language in the July 26, 2018 Stipulation that AIC is committed to complete the movement to full rate uniformity for the GDS-4 class in its next filed general gas rate case. In addition, all other rate classes completed the movement to rate uniformity in previous rate cases.

AIC notes Staff's agreement and concludes that the charges associated with GDS-4 Rider T are proper and in accordance with AIC's Stipulation in Docket No. 18-0463 that AIC complete the movement to full rate uniformity for the GDS-4 class in this general gas rate case. AIC maintains that the charges associated with GDS-4 Rider T should be approved by the Commission.

b) Staff's Position

Staff recommends that the Commission reject IIEC/FEA witness Collins' proposal to maintain separate demand charges for the GDS-4, Rider T, > 60 psig customers in all three rate zones. IIEC/FEA Ex. 2.0 at 14.

Mr. Collins explains what he describes as "significant issues with full movement to rate uniformity" and he believes these issues can be resolved by continuing the utilization of separate demand charges across rate zones for the Company's largest GDS-4 customers. *Id.* at 8. Mr. Collins indicates that despite the Company's proposal to limit the GDS-4 class to an average increase no greater than 1.5 times the system average increase, some of the Company's largest customers in Rate Zone III (GDS-4, Rider T, > 60 psig, greater than 30,000 MDCQ) will see increases in excess of 60% in base rate revenues (excluding PGA, TBS and QIP revenues). This is a much more significant increase for large users in Rate Zone III as compared to the increase for large users in Rate Zones I and II and is due to the Company's proposal for uniform demand charge for all GDS-4, Rider T, > 60 psig customers. *Id.* at 9.

Staff notes that maintaining separate demand charges and keeping GDS-4, Rider T, > 60 psig customers in separate rate zones is contrary to what the Company committed to in the Stipulation in Ameren's last natural gas rate case, Docket No. 18-0463. Staff Ex. 12.0 at 12.

Moreover, the Company committed to develop its system and operate as one consolidated utility (Ameren Ex. 31.0 at 6) and has made gradual progress over the last nine years toward full consolidation of Ameren's three legacy Companies (Ameren CIPS, Ameren CILCO and Ameren Illinois Power) with the support of the Commission:

To be clear, the Commission supports AIC's goal of single-tariff pricing, but any movement toward this goal must also consider the Commission's efforts to foster cost-based rates... The Commission does not mean to suggest that AIC must wait until such costs are equal among all three rate zones before the consolidation described in Proposal 5 can occur. The Commission can envision a point in the future where the costs of serving customers of two of the legacy utilities (i.e. AmerenCIPS and AmerenCILCO) may be considered "close enough," all things considered, and ready for consolidation.

Ameren Ill. Co., Final Order, Docket No. 10-0157 at 20-21 (Mar. 15, 2011).

The testimony and exhibits provided by IIEC/FEA in this case do not provide convincing evidence that would justify reversing the Company's commitment to, and the Commission's support of, Ameren's proposed full rate conformity among its respective service classes. Nine years has given the Company a long time to gradually move toward full rate consolidation. IIEC/FEA's desire to keep GDS-4 customers' rates separate would further delay the Company's progress toward full cost of service recovery from the GDS-4 class.

For all these reasons, Staff contends that the Commission should reject IIEC/FEA witness Collins' proposal to maintain separate demand charges for the GDS-4, Rider T, > 60 psig customers in all three rate zones.

c) IIEC/FEA's Position

IIEC/FEA state the rate design for the GDS-4 class was the result of the Stipulation reached in the previous AIC gas rate case, Docket No. 18-0463, where separate demand charges across rate zones for the Company's largest GDS-4 customers resulted in these customers now being included as subclasses of GDS-4. IIEC/FEA explain the subclasses include (1) Rider T customers served at >60 psig with MDCQ less than 30,000 therms, and (2) Rider T customers served at >60 psig with MDCQ greater than or equal to 30,000 therms (collectively, the GDS-4 subclasses). IIEC/FEA Ex. 2.0 at 9. In contrast, according to IIEC/FEA, AIC advocates an ill-advised move to full uniformity, meaning each GDS-4, Rider T, > 60 psig customer would pay the same rate regardless of the rate zone in which it operates, and regardless of the rate impact. *Id.* at 8; see also Staff Ex. 5.0 at 13.

IIEC/FEA explain the reason for their position is simply this: rate uniformity for this class of customers will result in some of the largest customers in Rate Zone III realizing an increase in excess of 60% in base rate revenues. IIEC/FEA Ex.2.0. at 9. IIEC/FEA advise that the impact of rate uniformity falls on 18 customers in Rate Zone III who will bear 33% of the total annual increase for this class. *Id.* at 10. IIEC/FEA opine the increase for these customers is significantly greater as compared to the increase for large users in Rate Zones I and II, and it occurs only because of the Company's insistence that a uniform demand charge be applied to all GDS-4, Rider T, > 60 psig customers. *Id.* at 9. IIEC/FEA state the class average increase for the GDS-4 subclasses is nearly 36%, which is still extreme and immoderate. IIEC/FEA. Ex.1.0 at 5, Table 1.

IIEC/FEA explain increases in excess of 60% are the very definition of rate shock. IIEC/FEA state an above 60% increase in rates is intolerable, particularly in the face of a pandemic and sagging economy where businesses are failing, and job retention is at risk. Furthermore, IIEC/FEA explain that large increases of this nature push affected customers to consider bypassing the AIC system and connect directly to an interstate pipeline. IIEC/FEA explain if that occurs, the remaining customers must pay the fixed costs that customer would have been paying had it remained on the system. IIEC/FEA Ex. 2.0. at 12-13.

IIEC/FEA state rate shock is not a new issue for the Commission. IIEC/FEA point out the Commission has stated "[t]he Commission is . . . keenly aware that its rate decisions can have adverse impacts on some customers if extreme care is not exercised." Docket Nos. 07-0585 (Cons.), Order at 354. IIEC/FEA also point out the Commission has acknowledged "... concerns about the potential for large rate impacts for certain rate classes and subclasses" *Ameren Ill. Co. d/b/a Ameren Ill.*, Docket No. 16-0387, Order at 10 (Feb. 23, 2017). IIEC/FEA explain that of course, in these cases and other rate cases where the issue of rate shock is being debated, what rate shock means and what is its impact, can only be deduced by the record before the Commission.

IIEC/FEA state the Company referred to the 2015 gas rate case in support of rate uniformity for the GDS-4 subclasses. *Ameren* Ex.16.0 at 9. In doing so he overlooks the

Commission's holding. In that case, the Commission noted, ". . . AIC developed uniform rates in situations where the rate-zone-level costs for a particular class were within 10% of the total combined class average costs. But in addition to class costs, *AIC also considered the prices currently paid by customers in the different rate zones so as to avoid any undue bill impacts resulting from additional movement towards uniformity.*" Docket No. 15-0142, Order at 99 (emphasis added). IIEC/FEA explain that, in that case for the GDS-4 class, AIC had recommended the continuation of non-uniform Demand Charges in all rate zones. The Commission supported these findings. *Id.* at 100. IIEC/FEA reason this is relevant to the instant case because the "undue bill impacts remain", and that is undisputed. IIEC/FEA is not suggesting the Commission is bound by the 10% rate limiter from the 2015 docket. However, by the Commission's own words and the support from both the Company and Staff, rate impacts due to rate uniformity cannot be ignored in this case.

IIEC/FEA argue the reasons for the rate shock are straightforward and not in dispute: "The three Rate Zones were designed separately based on the costs specific to serving that respective zone's customers. Rates in those zones were also set using different cost of service allocation methods. IIEC/FEA point out as a result, today there are still cost differences among the zones that must be considered in designing rates." IIEC/FEA Ex. 2.0 at 11. IIEC/FEA point out Mr. Collins went on to testify the T&D systems for each of the legacy companies were independently designed and constructed, resulting in different rates driven by different cost structures. The different cost structures were the function of differing service areas and customer characteristics. Central Illinois Power Service Company's service area, which is now Rate Zone I, is large in area and very rural. Central Illinois Light Company's system, which is now Rate Zone II, is small in area, but urban. Illinois Power Company, which is now Rate Zone III, had large concentrations of large industrial load in urban areas. IIEC/FEA state these distinct factors remain. *Id.* at 11.

IIEC/FEA witness Collins went on to further elaborate that the three legacy systems have been combined for just 10 years, whereas their respective T&D systems have been in place for several decades. IIEC/FEA argue because transmission main systems typically have depreciable lives of many decades, their costs are not quickly removed from their accounts and remain in place for decades. IIEC/FEA state Mr. Collins also asserted there are cost differences among the zones due to capacity size, pressure, and length of main. IIEC/FEA Ex. 4.0 at 5. IIEC/FEA state none of Mr. Collins' opinions were credibly disputed.

In sum, IIEC/FEA's position must prevail to avoid rate shock and mitigate the large increases, and to properly reflect zonal cost of service. The current non-uniform Demand Charges for the GDS-4 subclasses must remain in place pending Staff's recommended mitigation study.

In response to AIC, IIEC/FEA state AIC failed to offer any rebuttal to IIEC/FEA's argument against rate uniformity. IIEC/FEA state their witness Mr. Collins aptly testified: "AIC witness Goerss does not dispute the systems were designed separately or the fact they were designed based on costs specific to serving the respective Rate Zone's customers." *Id.*

IIEC/FEA state the only argument AIC presents is its preference. It relies heavily on the Stipulation from the prior case where it indicated its intention to pursue rate uniformity in what is now this case, and the reference to the same in the Commission's Final Order in that docket. Ameren Ex. 16.0 at 6. IIEC/FEA argue none of those assertions carry any weight.

First, IIEC/FEA note the Stipulation was a compromise of rate design and cost of service issues. None of it is an admission. IIEC/FEA state the Commission did not mandate completion of that movement in its Final Order, in the next rate case. Similarly, according to IIEC/FEA, that the Commission's Final Order references AIC's intention means nothing in terms of the Commission's decisions.

Finally, IIEC/FEA state as set forth in the Final Order, the "Stipulation[], . . . is submitted for the purposes of this proceeding only, does not constitute an agreement between or among the Active Parties on the underlying methodologies and inputs, is not deemed binding in any other proceeding, and may not be cited, offered, or relied upon in any other proceeding, except as necessary to enforce the terms of the Stipulation." *Ameren Ill. Co. d/b/a Ameren Ill.*, Docket No. 18-0463, Order at 2 (Nov. 1, 2018). IIEC/FEA argue the Stipulation is not an endorsement by the Commission, and any reference to in the manner cited by the Company is contrary to the Commission's directives.

IIEC/FEA argue the stated preference in the 2018 case does speak to the premature nature of AIC's position, that it would commit to absolute rate uniformity in a case years later without regard to the consequences and the record that would then be developed. IIEC/FEA state, as Mr. Collins testified, "Despite the prior commitment in a Stipulation with Staff, I believe the Commission must carefully examine the rate impacts on all customers based on the evidence presented in this rate case before concluding it is appropriate to complete full rate uniformity. The evidence presented in this docket indicates it is appropriate and necessary to keep distinct demand charges for the Company's largest customers across the three Rate Zones." IIEC/FEA Ex 4.0. at 3.

IIEC/FEA explain that not being able to challenge Mr. Collins' varying assertions regarding the inappropriateness of moving to rate uniformity for the GDS-4 subclass, AIC witness Goerss relies on Staff witness Harden's generic testimony from the last rate case, where she stated her belief that the time had come when the three rate zones should be uniform in all rates. Yet, Ms. Harden did not provide any evidence or analysis to support her conclusion that the time had come to apply uniform rates within the GDS-4 class. IIEC/FEA Ex. 4.0 at 4.

IIEC/FEA further note that Staff also agreed to the Company's position regarding rate uniformity for the GDS-4 subclass at issue, only reasoning that a period of time has elapsed. Staff Ex. 5.0 at 27-28. In doing so, Staff witness Boggs recognized that bill impacts resulting in rate shock have been the reason in the past in limiting rate uniformity. *Id.* IIEC/FEA state that Staff's position is unconvincing. Like AIC, Staff is fixated on the fact it has been nine years in AIC's march to complete uniformity. Staff Ex. 12.0. IIEC/FEA reply that Staff witness Boggs offered no support for his conclusion that Mr. Collins' evidence was "unconvincing", that Staff witness Boggs did not offer one scintilla of evidence challenging Mr. Collins' explanation and reasoning for the significant cost

disparities, comparing Rate Zone III to the other rate zones, which give rise to the exorbitant cost increases in the first instance.

In spite of his position, IIEC/FEA state Staff witness Boggs recognizes, "...bill impacts to some GDS-4 Rider T customers will be significant, the approximate 36% rate increase proposed by the Company is for the entirety of the GDS-4 class." Staff Ex.12 at 240-242. However, "some GDS-4 Rider T customers" he acknowledges are seeing an increase of over 60%. He essentially admits to rate shock but then "...recommend[s] the Commission order the Company to study possible ways of separating the GDS-4 class so that future rate designs can mitigate the rate impacts to larger GDS-4 Rider T customers." *Id.* at 24. Thus, according to IIEC/FEA, the rate mitigation study should precede any move to final uniformity. In the meantime, the Commission should mitigate the rate impacts to large GDS-4 customers now.

In summary, IIEC/FEA point out the Commission must consider the rate impacts on all customers based on the evidence presented in this rate case, and not based on a previous record. According to IIEC/FEA, while AIC purports to claim some understanding about rate shock and rate gradualism, its position in this docket suggests it does not. IIEC/FEA Ex. 4.0 at 3. IIEC/FEA state there is no detriment, and none has been shown, to maintaining the current GDS-4 subclass rates. Rate uniformity can happen in time for the GDS-4 subclass but there is no good reason it must be today. IIEC/FEA believe the evidence presented in this docket indicates it is appropriate and necessary to keep distinct demand charges for the Company's largest customers across the three rate zones at this time. IIEC/FEA state the Commission should exercise its good judgment and await the outcome of the Staff rate mitigation study.

d) Commission Analysis and Conclusion

The Commission supports AIC's movement towards full rate uniformity. Nevertheless, a decision towards rate uniformity cannot be done absent a reasoned look towards the consequences on the affected rate classes and potential for rate shock, even if, as here, the affected customers represents less than 1% of AIC's total natural gas customer base. The record in this proceeding shows that a uniform demand charge for GDS-4 subclasses would have a significant impact on customers in Rate Zone III. The Commission agrees with IIEC/FEA that, despite AIC's commitment towards rate uniformity, there is no reason why total rate uniformity must be accomplished in this docket. Especially considering the uncontested agreement that AIC will perform a rate mitigation study regarding GDS-4, Rider T customers. The Commission anticipates that the rate mitigation study will provide guidance for any future movement towards rate uniformity. Therefore, for now, the Commission rejects AIC's proposal for full rate uniformity for the GDS-4 subclasses and AIC shall maintain the separate demand charges for GDS-4 subclasses. To be clear, the Commission is not rejecting a movement to full rate uniformity in the future.

2. Customer and Usage Charges for GDS-1

a) AIC's Position

In accordance with the Commission's approval of AIC's GDS-1 rate design in previous gas rate cases, AIC's proposed rate design sets the GDS-1 customer charge to

recover all customer-related costs in the ECOSS. AIC's GDS-1 rate design then subtracts meter refusal charge revenues and divides the remaining amount by the number of residential bills to derive a customer charge per month. The remaining costs are collected through a per-therm delivery charge.

AIC notes that AG witness Rubin generally supports AIC's GDS-1 rate design. However, Mr. Rubin proposed an adjustment in which the subsidy provided by the GDS-1 class to the non-residential classes through revenue allocation would instead be allocated between the residential customer charge and the delivery charge. Mr. Rubin asserts that this adjustment reflects the proportion of total residential costs that are customer related. Based upon Mr. Rubin's proposed rate design modification, the customer charge would be \$19.82 per month and the delivery charge would be \$0.33327 per therm.

AIC disagrees with Mr. Rubin's proposed adjustment. AIC's GDS-1 rate design is consistent with the rate design calculation for all other AIC rate classes. Furthermore, Mr. Rubin's GDS-1 rate design modification unnecessarily complicates the rate design process for a negligible effect on customer bills. AIC states that when Mr. Rubin's proposed rate design modification is compared with AIC's rate design, which has been approved by the Commission in AIC's previous gas rate cases and consistently used by AIC across all other rate classes, the differences between AIC's rate design proposal and Mr. Rubin's proposal was immaterial for most customers—extending up to 0.27% or \$1.74 on an annual bill exceeding \$600.

In addition, Staff witness Boggs is in agreement with AIC's GDS-1 rate design proposal and supports the Commission's adoption of AIC's proposal. In his rebuttal testimony, Staff witness Boggs notes that the differences at various usage levels between AIC's proposed rate design and Mr. Rubin's proposed rate design are not significant. Staff witness Boggs recommends that the Commission reject Mr. Rubin's rate design proposal and adopt AIC's GDS-1 rate design proposal because AIC's rate design proposal for GDS-1 customers is cost-based and consistent with the rate designs of the other natural gas customer classes, and Mr. Rubin's rate design proposal does not have a material effect on the monthly bill of customers in the GDS-1 rate class.

AIC states that Mr. Rubin's proposal would unnecessarily complicate the rate design process for an immaterial impact on customer bills and create inconsistencies with other class rate design processes previously approved by the Commission. AIC asserts that, in contrast, the rate design that AIC uses and that the Commission has repeatedly approved achieves a cost-based customer charge for residential customers and maintains consistency with other classes' rate designs. AIC argues that the Commission should again approve AIC's rate design in this case.

b) AG's Position

The AG recommends that the Commission order that the subsidy provided by the GDS-1 class to non-residential classes through the revenue allocation process be apportioned between the residential customer charge and the delivery or usage charge on the same basis that other residential revenues are collected. The AG notes AIC, on the other hand, proposes to collect the full cost of the subsidy through the usage charge. Ameren Ex. 31.0 at 9.

The AG argues that the Company's approach would inequitably place a disproportionate burden on customers who use more natural gas. AG Ex. 3.0 at 5. The AG's approach would fairly increase all residential bills by the same percentage to pay the subsidy. *Id.* at 5. In this way, the AG's approach is consistent with the statutory and regulatory principles of fairness and gradualism.

The AG disagrees with AIC's contention that the AG's approach would "unnecessarily complicate[] the rate design process for a negligible effect on customer bills." AIC IB at 161. The AG points out that AIC does not dispute that the AG's recommendation would equitably distribute costs. The AG argues this means that the Company admits that its approach would disproportionately burden some customers more than others. The AG contends that AIC's argument that the Commission accept this disproportionate effect because it is "negligible" is defeated by the Company's own admission. *Id.* The AG points out that the Company acknowledges its approach will not be negligible for all customers. *Id.* ("[T]he differences between AIC's rate design proposal and [the AG's witness] Mr. Rubin's proposal was immaterial for *most customers* ...") (emphasis added).

The AG challenges AIC's position as untenable. AIC argues that the Commission should not abandon a cost-based approach that is fair and equitable merely because an investor-owned utility complains that it is allegedly complicated. Here, as the AG iterates, the Company acknowledges that the AG's recommendation ensures a more equitable and just apportionment. Because "the overall goal of rate design is *fairness* in allocating costs between the customer classes" (*Coalition to Request Equitable Allocation of Costs Together v. Commonwealth Edison Co.*, 2015 IL App (2d) 140202, ¶52 (2d Dist. 2015) (emphasis added)), the AG asks the Commission to reject AIC's approach, and order the Company to implement the AG's recommendation.

c) Commission Analysis and Conclusion

The Commission finds that AIC's rate design model is cost-based and consistent with the rate design for other natural gas customer classes. While Staff did not address this issue in briefs, Staff witness Boggs agrees with the Company's position on this issue. Staff Ex. 12.0 at 15-16. Staff witness Boggs and AIC indicate that the AG's proposal would create inconsistencies with other class rate design processes to achieve a result that has a negligible effect on customer bills. The Commission agrees with AIC and Staff and, therefore, rejects the AG's proposal and approves the use of AIC's GDS-1 rate design in this proceeding.

VIII. OTHER RIDER AND TARIFF CHANGES

A. Uncontested Issues

1. Rider VBA

Rate Case Revenue is the dollar amount of Distribution Delivery Charge revenues arising from the revenue requirement approved by the Commission in the Company's most recent rate proceeding for the applicable Rate. AIC's Rider VBA requires the Company to include Rider VBA "Rate Case Revenue" for each applicable rate arising from the approved revenue requirement in this Rate Case in its compliance filing.

AIC's proposed Rider VBA Rate Case Revenue for its general delivery service residential customer class (GDS-1) is \$188,921,639, and its proposed Rider VBA Rate Case Revenue for its general delivery service small general customer class (GDS-2) is \$56,418,607. No party opposes AIC's proposed Rider VBA Rate Case Revenue values.

The Commission finds that AIC's Rider VBA Rate Case Revenue values are uncontested and reasonable, and they are hereby approved.

2. Uncollectibles – Rider GUA

AIC's uncollectibles are recovered through base rates as a subset of the Customer Charge. The uncollectibles amount "included in rates" is used by AIC to track the amount of uncollectible expense for administration of Rider GUA – Gas Uncollectible Adjustment. In Docket No. 15-0142, the Commission approved the current methodology of establishing "base rate" amounts for two customer groups: Residential and Non-Residential.

AIC proposes to update its uncollectibles values in this proceeding, and to recover through base rates uncollectible values of \$0.53 for Residential Customers and \$0.26 for Non-residential Customers. No party opposes AIC's proposed updated uncollectibles values.

The Commission finds that AIC's proposed updated uncollectibles values are uncontested and reasonable, and they are hereby approved.

3. Uncollectibles – Rider S

AIC's Rider S provides System Gas Service (Company supplied gas) to all Residential Customers and to Non-Residential Customers that do not wish to procure gas supply through a Retail Gas Supplier. The Rider S uncollectible factor compensates AIC for its supply-related uncollectible expense, which is not recovered in delivery service rates, and is calculated based on the Company's bad debt expense for each eligible rate class as established by the Commission as part of a Gas Delivery Service rate case. The Rider S uncollectible factor is reset in rate cases to correspond to the level of test year expense reflected in the overall revenue requirement.

AIC's updated Rider S uncollectible factor is presented on AIC Exhibit 3.3, Schedule 2 and applied to Rider PGA gas costs in Ameren Ex. 16.0 at 23. No party opposes AIC's methodology for updated Rider S uncollectible factor, which will be set to correspond to the uncollectible amounts approved by the Commission in this proceeding.

The Commission finds that AIC's proposed methodology for updated Rider S uncollectible factor, which will be set to correspond to the uncollectible amounts approved by the Commission in this proceeding, is uncontested and reasonable, and it is hereby approved.

4. Miscellaneous Fees and Charges – Incremental Gas Meter Charge

AIC's Incremental Gas Meter Charge, as described in the Company's Miscellaneous Fees and Charges tariff, is a charge that a GDS-1 or GDS-2 customer is required to pay if the customer "installs intermittent gas use equipment, including but not limited to a pool heater or back up generation, where the Company has determined

alternate metering is required to safely and reliably serve the customer's peak demand, and alternate metering has been installed."

AIC updated its cost data, including metering equipment cost and labor cost, that forms the basis of its current Incremental Gas Meter Charges. In doing so, AIC updated its analysis using a Commission-approved methodology to reflect current metering equipment cost and labor cost. AIC proposes an Incremental Gas Meter Charge for an alternate diaphragm meter of \$295.00 or \$25.00 per month for 12 consecutive months and proposes an Incremental Gas Meter Charge for an alternate rotary meter of \$3,839.00 or \$320.00 for 12 consecutive months. These proposed charges represent a 7.08% and 7.63% increase from existing charges.

No party opposes AIC's updated Miscellaneous Fees and Charges – Incremental Gas Meter Charges. The Commission finds that AIC's proposed updated Miscellaneous Fees and Charges – Incremental Gas Meter Charges are uncontested and reasonable, and they are hereby approved.

5. Rider GER

In Docket No. 19-0632, following a Stipulation agreement between the Company and the AG regarding transition of internal Company EE electric program labor to recovery through Rider EE - Energy Efficiency and Demand Response Investment ("Rider EE"), the Commission approved switching of 2020 program year electric EE-related Company labor costs and EE travel costs for cost recovery in the electric EE Formula Rate update filed in 2021. In Docket No. 19-0370, Staff and the Company agreed that EE internal labor recovery in its gas jurisdiction should mirror recovery of such costs in its electric jurisdiction; the test year 2021 revenue requirement determination is the first opportunity for AIC to transition gas EE internal labor from base rates to rider recovery.

Accordingly, AIC proposes to remove forecasted Rider GER revenues and expenses from test year present-rate revenues and operating expenses. These expenses include EE employee wages, salaries, and benefits – gas EE internal labor – consistent with AIC's recovery of the electric costs of employee wages, salaries, and benefits through Rider EE. See also Section II.A.8.

6. Cash Working Capital – Rider S

AIC's Rider S CWC factor compensates the Company for the financing of the lag between the purchased of system supplied gas and the collection of those system supplied gas costs from customers. The adjustment factor is updated each rate proceeding.

AIC's updated Rider S CWC factor is presented on Ameren Exhibit 3.3, Schedule 1, and reflects an updated CWC of 0.22864%, which was calculated using a purchased power cost of \$1,000,000 for illustrative purposes, 8.29 Net Lag Days, and the equity and debt components of AIC's proposed December 31, 2021 capital structure. AIC determined its CWC requirement by calculating a return on the equity (grossed up for income taxes) and debt components of AIC's proposed capital structure, to determine total revenue requirement applicable to the power supply portion of CWC.

No party opposed AIC's updated CWC factor, which will be set to correspond to the CWC inputs, tax gross up, and equity and debt components approved by the

Commission in this proceeding. The Commission finds that AIC's updated CWC factor is uncontested and reasonable, and it is hereby approved.

7. Baseline ICT/VITA

For purposes of calculating the Invested Capital Tax Cost ("ICT") Adjustment, the Commission finds that the ICT Base Rate Allowance included in Test Year Revenue Requirement is \$15,201,000. This finding reflects AIC's and Staff's agreement on this issue.

Further, AIC agrees with Staff witness Ebrey's proposed language on baseline amounts for Rider VITA if the 9.5% current state tax rate is adopted by the Commission:

For purposes of calculating both base rates in this proceeding and calculating the amortization of deferred state and federal income taxes excesses and deficiencies baseline for Rider VITA, the Commission finds that the State income tax rate in effect is 9.50%, which is the sum of the Illinois personal property tax replacement income tax rate and the Illinois State income tax rate, and the federal income tax rate in effect is 21.00%. The Commission further finds that the amortization of deferred state income taxes excesses and deficiencies is \$(964,198) and the amortization of deferred federal income taxes excesses and deficiencies is \$(565,935). These amounts are exclusive of amortization of deferred state and federal income taxes excesses and deficiencies for previously disallowed plant.

Staff Ex. 8.0R at 3; Ameren Ex. 19.0 at 5-6.

AIC proposes, and Staff does not oppose, the following language for the Rider VITA baseline if the 10.49% proposed state tax rate is adopted by the Commission:

For purposes of calculating both base rates in this proceeding and calculating the amortization of deferred state and federal income taxes excesses and deficiencies baseline for Rider VITA, the Commission finds that the State income tax rate in effect is 10.49%, which is the sum of the Illinois personal property tax replacement income tax rate and the Illinois State income tax rate, and the federal income tax rate in effect is 21.00%. The Commission further finds that the amortization of deferred state income taxes excesses and deficiencies is \$(706,285) and the amortization of deferred federal income taxes excesses and deficiencies is \$(620,097). These amounts are exclusive of amortization of deferred state and federal income taxes excesses and deficiencies for previously disallowed plant.

Id.

B. Contested Issues

1. Rider QIP – Compliance Filing

a) AIC’s Position

The AG recommends a compliance filing be made in this docket when the actual costs of 2019 and 2020 QIP are known, which would be after new base rates in this proceeding become effective, and recommends additional compliance filings if the Commission Orders in the 2018, 2019 or 2020 QIP reconciliation proceedings determine that the actual prudent and reasonable cost of the net QIP Investment is different from the actual net QIP Investment cost as reported in the initial compliance filing.

AIC asserts that this recommendation should be rejected because it is administratively burdensome and unnecessary. AIC states that the proposal would keep the record open for years to accommodate compliance filings that would include QIP reconciliations for 2018-2019 that are not yet completed and a 2020 QIP reconciliation that will not be filed until next year.

AIC explains that the additional administration associated with keeping the record open is unnecessary for at least three reasons. First, the “required” compliance filing is accomplished per AIC’s Rider QIP Tariff, which requires the Company to file a public document in the rate case docket providing the calculation of AdjNetQIP and AdjNetDep adjustments, by component, based on comparing the actual amounts of NetQIP and NetDep at the end of the QIP forecast period used in the Company’s last rate case with the amount the Commission approved to be added to the Company’s rate base as of the end of the QIP forecast period.

Second, any additional compliance filings in this proceeding, especially spread out over several years, could create confusion to the extent amounts for AdjNetQIP and AdjNetDep differ from the amounts included in the order.

Third, unlike an Article XVI rate proceeding, an Article IX rate proceeding like this gas rate case does not have a built in provision for a reconciliation and true-up of rates. Accordingly, any additional compliance filings in this proceeding related to QIP are unnecessary and provide no additional benefit to the record. AIC states that the QIP reconciliation dockets are the appropriate forum to address any changes to AdjNetQIP and AdjNetDep in between gas rate cases.

b) AG’s Position

See Section II.B.2 of this Order.

c) Commission Analysis and Conclusion

The Commission agrees with AIC that the AG's proposal is administratively burdensome and unnecessary, as the AG's proposal would require keeping the record open for years to accommodate compliance filings that would include QIP reconciliations for 2018-2019 that are not yet completed and a 2020 QIP reconciliation that will not be filed until next year. Accordingly, the Commission rejects the AG’s recommendation.

2. Statement for Order on 2020 QIP

a) AIC's Position

AIC notes that in response to data request AG 21.04, the Company provided its recommended order language on 2020 QIP. The values included were revised from those Staff recommended in direct testimony to reflect changes to the actual depreciation and amortization expense. AIC and Staff agree on recommended order language and amounts for 2020 QIP in base rates. AIC notes that the AG also agrees with the form of the language, prior to the AG's excess 2020 QIP Plant additions adjustment (which AIC opposes, see *supra* Section II.B.2). Thus, AIC and Staff agree the following language should be included in the Order in this proceeding:

The 2020 QIP amounts included in base rates are comprised of \$172,926,005 of net forecasted investment, related accumulated depreciation of \$9,612,819 (increase to net forecasted investment), related accumulated deferred income taxes of \$1,988,892 (decrease to net forecasted investment), resulting in NetQIP of \$180,549,932 and \$2,494,890, for annualized depreciation expense less annualized depreciation expense applicable to the plant being retired.

AIC contends that for these reason, AIC's and Staff's position should be approved, subject to the Commission's determination of final 2020 QIP amounts.

b) AG's Position

It is the AG's understanding that AIC and Staff agree on the proposed language, as does the AG, but with exception to the amounts indicated, which should be revised to reflect AIC's adoption of the AG's adjustment to excess 2020 QIP plant additions, as set forth below. See AG IB Ex. A at Sch. B-5.

The 2020 QIP amounts included in base rates are comprised of \$74,131,764 of net forecasted investment, related accumulated depreciation of \$4,120,926 (increase to net forecasted investment), related accumulated deferred income taxes of \$(852,619) (decrease to net forecasted investment), resulting in NetQIP of \$77,400,071 and \$1,068,679, for annualized depreciation expense less annualized depreciation expense applicable to the plant being retired.

c) Commission Analysis and Conclusion

In Section II.B.2 of this Order, the Commission rejects the AG's adjustment to QIP. Accordingly, the ordering paragraph language supported by AIC and Staff is adopted and reflected in Section X of this Order.

IX. OTHER ISSUES

A. Contested Issue

1. Independent Audit of AMS Costs

a) AIC's Position

AIC notes that IIEC/CUB/FEA witness Gorman, again in this proceeding proposed that the Commission order a third-party audit of total AMS costs—at the expense of AIC's customers. AIC argues that the basis for IIEC/CUB/FEA witness Gorman's third-party audit proposal is a generic concern regarding historical increases in total AMS costs and total AMS cost allocations.

AIC asserts that the Commission should reject IIEC/CUB/FEA witness Gorman's third-party audit proposal. AIC notes that the Commission already found AIC's historical AMS costs to be prudent and reasonable and has repeatedly reminded the parties that it expects them to use the rate case process and the extensive annual AMS cost reporting required by the GSA to assess AIC's AMS costs. AIC asserts that its customers should not have to pay for another layer of review. *Ameren III. Co.*, Docket No. 16-0287, Order at 25 (Apr. 7, 2017); *Ameren III. Co.*, Docket No. 17-0197, Order at 26 (Dec. 6, 2017); *Ameren III. Co.*, Docket No. 19-0436, Order at 49 (Dec. 16, 2019).

AIC contends that IIEC/CUB/FEA witness Gorman's separate audit proposal disregards the Commission's order and points out that AIC's 2016 GSA amendment proceeding, Docket No. 16-0287, and again in AIC's 2017 and 2019 electric formula rate update proceedings, Docket Nos. 17-0197 and 19-0436, the Commission rejected IIEC/CUB/FEA witness Gorman's proposal for an independent third-party audit of total AMS costs.

AIC argues that in Docket No. 16-0287, the Commission “note[d] IIEC/CUB's concern about the growth of AIC's AMS costs and [IIEC/CUB's] proposal for a third-party audit of AMS costs” and concluded that a third-party audit was not necessary because “the reporting requirements of Appendix C [to the amended GSA] will provide the means to determine whether service company services are provided at rates that are prudent and reasonable.” Docket No. 16-0287, Order at 25. AIC states that in Docket No. 17-0197, the Commission again rejected IIEC/CUB/FEA witness Gorman's third-party audit proposal finding AIC's annual formula rate proceedings continued “to provide the appropriate opportunity for the Commission and the parties to review the prudence and reasonableness of all AIC's costs of service, including AMS charges.” Docket No. 17-0197, Order at 26.

AIC notes that just last year in Docket No. 19-0436, the Commission rejected IIEC/CUB/FEA witness Gorman's third-party audit proposal a third time, finding that the additional external reporting requirements and enhanced internal audit processes, adopted in Docket No. 16-0287, continue to provide sufficient detail for parties to review annual changes in the cost of service provided by AMS. Docket No. 19-0436, Order at 49. Additionally, AIC argues that the Commission emphasized that it would not order a separate audit until the record shows that the formula rate process does not provide an adequate opportunity to review allocated AMS costs. *Id.*

AIC avers that IIEC/CUB/FEA witness Gorman offered no testimony in this proceeding as to why the Commission's findings in prior orders should not apply this case. AIC maintains, despite Orders in Docket Nos. 17-0197 and 19-0436, Mr. Gorman did not show that AIC's AMS cost reporting is "wanting" or that this rate case and AIC's annual electric formula rate case "do not provide an adequate opportunity to review allocated AMS costs." Docket No. 17-0197, Order at 26; Docket No. 19-0436, Order at 49.

AIC further points out that IIEC/CUB/FEA's Initial Brief arguments also advocating for a separate audit, likewise conspicuously omit any mention of the Commission's Docket No. 19-0436 directive. AIC argues that directive should not be ignored because it aptly insulates AIC's customers from bearing the cost of an unnecessary audit proceeding. The Company explains that AIC's customers already share AIC's prudent and reasonable costs to litigate this proceeding and AIC's annual electric formula rate update proceedings, including AIC's costs to respond to IIEC/CUB/FEA's repeated separate audit proposals. 220 ILCS 5/9-101, 220 ILCS 5/9-229. AIC states that all the parties, including IIEC/CUB/FEA, had the tools here—the statutory rate case period, discovery, and the extensive AMS cost data that AIC supplies annually per the GSA—to review every AMS service and its cost to AIC (and every Ameren affiliate) and to determine in this docket whether those AMS services and their costs are reasonable and prudent.

AIC argues that, as Staff agrees, the record is devoid of any evidence to the contrary—that the tools to assess AMS services and costs somehow were not available in this proceeding and regardless of whether IIEC/CUB/FEA actually *use* the rate case process and the extensive AMS cost data to assess AIC's AMS costs, as long as those tools are available, AIC's customers should not have to pay for another layer of AMS cost review.

Additionally, AIC contends that IIEC/CUB/FEA witness Gorman's third-party audit proposal is legally untenable. First, AIC explains, the proposal does not satisfy the legal prerequisites for a management audit because the Commission's authority to order a third-party audit pursuant to Section 8-102 of the Act is not unfettered. AIC states that the Act permits the Commission to conduct or order an audit or investigation, including by a third party, of any public utility only when it has reasonable grounds to believe that the audit or investigation is necessary to assure that the utility is providing adequate, efficient, reliable, safe, and least-cost service and charging only just and reasonable rates therefor, or that the audit or investigation is likely to be cost-beneficial in enhancing the quality of service or the reasonableness of rates. 220 ILCS 5/8-102. Thus, AIC explains, Section 8-102 mandates that "[t]he Commission shall, before initiating any such audit or investigation, issue an order describing the grounds for the audit or investigation and the appropriate scope and nature of the audit or investigation." *Id.*

AIC maintains that today, it provides adequate, efficient, reliable, safe, and least-cost service to Illinois customers and the rates that it charges for that service are only those rates approved by the Commission as just and reasonable.

Second, AIC explains that IIEC/CUB/FEA witness Gorman's audit proposal is inconsistent with Section 7-101 of the Act, which governs Commission approval affiliate transactions. Section 7-101 expressly limits the type of affiliate information that the Commission may access: "The Commission shall not have access to any accounts and

records of, or require any reports from, an affiliated interest that are not related to a transaction . . . with the electric or gas public utility.” 220 ILCS 5/7-101(2)(ii). AIC avers that IIEC/CUB/FEA witness Gorman stresses that his proposed third-party audit would review “total” AMS costs, but, AIC argues, “total” AMS costs in any given year include AMS charges that are not related to transactions between AMS and AIC, such direct AMS charges to other Ameren affiliates. AIC opines that it does not have access to affiliate cost data that does not affect AIC, including the AMS costs forecasted to be directly allocated to any of the other Ameren affiliates. Thus, AIC asserts, IIEC/CUB/FEA witness Gorman’s third-party audit proposal is legally unworkable under Section 7-101.

Third, AIC explains, both the Act and Illinois common law insulate prior Commission orders from collateral attack in a separate proceeding, defining a collateral attack as “an attempt to impeach [a] judgment in an action other than that in which it was rendered.” *Buford v. Chief, Park. Dist., Police*, 18 Ill. 2d 265, 271 (1960); *People v. Hubbard*, 2012 IL App (2d) 101158 ¶¶ 17-19. AIC argues that orders by the Commission within its jurisdiction are not subject to collateral attack. *Peoples Gas Light and Coke Co. v. Buckles*, 24 Ill. 2d 520, 528 (1962); 220 ILCS 5/16-108.5(d)(3) (“The Commission’s determinations of the prudence and reasonableness of the costs incurred for the applicable calendar year shall be final upon entry of the Commission’s order and shall not be subject to reopening, reexamination, or collateral attack in any other Commission proceeding.”) 220 ILCS 5/16-108.5(d) (“The Commission’s determinations of the prudence and reasonableness of [such] costs incurred for the applicable calendar year shall be final upon entry of the Commission’s order and shall not be subject to reopening, reexamination, or collateral attack in any other Commission proceeding, case, docket, order, rule or regulation”); *Ill. Commerce Comm’n v. Ill. Power Co.*, Docket No. 01-0701, Order at 7 (Feb. 19, 2004) (“The proper means by which to correct perceived errors in Commission orders is through the rehearing and appeal processes. Such corrections should not be sought in other dockets.”).

AIC notes that IIEC/CUB/FEA witness Gorman proposes a third-party audit of historical total AMS costs, presumably over the 2013-2019 period referenced in his testimony. AIC explains that the Commission has already found AIC’s AMS costs over the 2013-2019 period to be prudent and reasonable. See Docket No. 19-0436, Order at 48-49 (2018 actual costs); *generally Ameren Ill. Co.*, Docket No. 18-0807, Order (Dec. 4, 2018) (2017 actual costs); *generally Ameren Ill. Co.*, No. 18-0463, Order (Nov. 1, 2018) (2019 future test year costs); Docket No. 17-0197, Order at 25-27 (2016 actual costs); *Ameren Ill. Co.*, Docket No. 16-0262, Order at 18 (Dec. 6, 2016) (2015 actual costs); *generally* Docket No. 15-0142, Order (2016 future test year); *generally Ameren Ill. Co.*, Docket No. 15-0305, Order (Dec. 9, 2015) (2014 actual costs); *generally Ameren Ill. Co.*, Docket No. 14-0317, Order (Dec. 10, 2014) (2013 actual costs); *generally Ameren Ill. Co.*, Docket No. 13-0192, Order (Dec. 18, 2013) (2014 future test year); *generally Ameren Ill. Co.*, Docket No. 13-0301, Order (Dec. 9, 2013) (2012 actual costs). Further, AIC explains, the Commission is currently reviewing AIC’s actual 2019 AMS costs in the Company’s pending 2020 electric formula rate update proceeding, Docket No. 20-0381, where no party raised any issue with those costs. See *generally Ameren Ill. Co.*, Docket No. 20-0381 (pending). AIC explains that to the extent IIEC/CUB/FEA witness Gorman incorrectly presumes that the Commission’s assessments of AIC’s AMS costs in prior proceedings have been inadequate, AIC disagrees. Regardless, AIC states, the

Commission cannot find historical AMS costs, which it once found prudent and reasonable, imprudent or unreasonable in a later, separate third-party audit proceeding. AIC asserts that if IIEC/CUB/FEA witness Gorman seeks to somehow correct those orders—with another layer of Commission review, an independent management audit—legally, he cannot.

AIC notes that in Initial Brief, IIEC/CUB/FEA collaterally attack the Commission's prior orders in two additional ways. AIC argues that first, IIEC/CUB/FEA dispute that the annual reporting required by the amended GSA, and in particular, the enhanced Internal Audit report that AIC must provide the Commission per Appendix C to the GSA, is insufficient to assess the prudence and reasonableness of AIC's AMS costs. AIC explains that this, however, is a collateral attack on the Commission's Docket Nos. 16-0287, 16-0262, 17-0197, and 19-0436 Orders, all of which expressly disagreed and found "that the reporting requirements of Appendix C provide the means to determine whether service company services are provided at rates that are prudent and reasonable." Docket No. 16-0287, Order at 25; Docket No. 17-0197, Order at 26; Docket No. 19-0436, Order at 49.

Second, AIC notes that IIEC/CUB/FEA collaterally attack the Commission's prior orders rejecting IIEC/CUB/FEA witness Gorman's separate audit proposal by asserting that previous rejections need to be reversed. AIC argues that IIEC/CUB/FEA go so far as to contend that "[t]he previous rejections of IIEC/CUB/FEA proposals for an independent third-party audit were simply bad policy." AIC notes that IIEC/CUB/FEA repeatedly urge the Commission to adopt the dissent's view in Docket No. 17-0197 instead. But, AIC again explains, the Commission repeatedly disagreed with IIEC/CUB/FEA in the Docket Nos. 16-0287, 17-0197, and 19-0436 orders. AIC maintains that if IIEC/CUB/FEA disagreed with those orders, the proper route was appeal and it did not do so.

Additionally, AIC stresses that Section 8-102 of the Act mandates that "the cost of an independent audit shall be borne initially by the utility but shall be recovered as an expense through normal ratemaking procedures." 220 ILCS 5/8-102. Consequently, AIC explains, the Commission has routinely approved full recovery of third-party audit costs in rates. See, e.g. Docket No. 11-0767, Order at 59-60. AIC notes that when the cost is amortized, the Commission has permitted the utility to earn a return on the unrecovered balance in rate base. See, e.g., *id.* at 39; *Cent. Ill. Pub. Svc. Co.*, Docket No. 90-0072, 1990 Ill. PUC LEXIS 625, at *36, 39-40 (Nov. 28, 1990) (finding "to deny the Company an opportunity to recover such costs over a five-year amortization period would unduly dilute the effects of the statutory directive that management audit expenditures be recovered through rates"); *Cent. Ill. Light Co.*, Docket No. 90-0127, 1991 Ill. PUC LEXIS 17, at **36-37 (Jan. 16, 1991). Further, AIC explains, when the utility incurs audit costs beyond the cost of the independent auditor, like outside consultant and counsel fees, printing costs, and affiliate expenses, those costs are recoverable too. See, e.g., Docket No. 11-0767, Order at 36-37 (approving full recovery of Section 8-102 management audit costs, including independent auditor's costs and incremental expenses, such as legal fees and affiliate labor costs); *N. Shore Gas Co.*, Order, Docket 91-0010, 1991 Ill. PUC LEXIS 636, **27-29 (Nov. 8, 1991) (approving recovery of all incremental audit costs); *Contel of Ill., Inc.*, Order, Docket No. 90-0128, 1991 Ill. PUC LEXIS 18, **80-81 (Jan. 16, 1991)

(approving recovery of legal fees for outside counsel's services related to audit); *Cent. Ill. Light Co.*, 1991 Ill. PUC LEXIS 17, **36-40 (approving recovery of rent incurred to provide working space for the independent auditor and Commission Staff, costs associated with refurbishing that space, and fees for outside counsel's services related to the audit); *Cent. Ill. Pub. Svc. Co.*, 1990 Ill. PUC LEXIS 625, **36-38 (approving recovery of outside consultant fees and printing costs); *Peoples Gas Light & Coke Co.*, Order, Docket No. 90-0007, 1990 Ill. 64 PUC LEXIS 593, *52 (Nov. 9, 1990) (approving recovery of all incremental costs, finding, "[i]t is consistent with the purpose of Section 8-102 for the Commission to adopt an interpretation which allows utilities the full recovery of audit costs which are initially incurred by the utility").

AIC states that given this full cost recovery, the cost of a third-party audit can be substantial. AIC notes that Illinois-American Water Company's 2010 Commission-ordered Section 8-102 management audit, for example, cost the utility's customers over \$1.1 million (ten years ago). See, e.g., Docket No. 11-0767, Order at 36-37 (approving full recovery of \$1.114 million in Section 8-102 management audit costs, as an amortized expense with carrying costs on the unamortized balance). See *Ill. Commerce Comm'n on Its Own Mtn.*, Docket No. 10-0366, Order at 6 (Apr. 9, 2013). Notably, AIC points out, that independent audit has not been the basis for any adjustment to services company costs in Illinois-American's rate cases after the docket in which it was ordered, Docket No. 09-0319. See generally Docket No. 11-0767, Order; *Illinois-American Water Co.*, Docket No. 16-0093, Order (Dec. 13, 2016).

AIC asserts that IIEC/CUB/FEA witness Gorman did not address or justify the significant cost that his audit proposal would impose on AIC's customers. Further, AIC notes, as shown on AMS's most recent annual FERC Form 60, less than half of total AMS costs charged to the Ameren affiliates in 2019 were charged to AIC, and that is before allocation among AIC's gas, electric distribution, and electric transmission operations, and before any ratemaking adjustments. AIC argues that its customers should particularly not bear the cost of an audit of "total AMS costs" that are not even related to AIC's operations.

AIC states that IIEC/CUB/FEA's disagreement with the rate case process is moot. AIC points out that in post-hearing brief, IIEC/CUB/FEA reiterate that the basis for their separate audit proposal is an increase in historical AMS costs. To begin, AIC explains, that a cost has increased over a historical level is not, in and of itself, evidence of imprudence or unreasonableness. Further, it is not logical to expect AIC's costs, including AIC's AMS costs, to remain flat over a historical period, given inflation, wage increases, and changes in AIC's business needs. Indeed, AIC maintains, the level of services that AIC requires from AMS to operate can and do change from year to year. AIC asserts that when it comes to the AMS costs at issue in this case, AIC's direct case filing and its discovery explained the bases for AIC's forecasted cost level and material variances since 2018, the last year of actual costs available at the time this rate case was filed.

AIC notes that when it comes to historical AMS costs, IIEC/CUB/FEA witness Gorman's own evidence shows that AIC's portion of total AMS costs has remained consistent, fluctuating only 1% to 2% year-over-year over the 2013 to 2019 period.

AIC points out that IIEC/CUB/FEA also confuse the parties' respective burdens of proof. AIC notes that IIEC/CUB/FEA argue that "AIC customers are entitled to some

assurance that *every dollar* they are asked to pay for AMS service, has been reviewed and deemed prudent.” AIC states that customers have that assurance. Again, the Commission’s approval of rates as just and reasonable includes the approval of the components of rates as just and reasonable.

AIC asserts that to the extent, IIEC/CUB/FEA suggest that AIC must prove the prudence and reasonableness of every forecasted AMS charge to AIC in its direct case filing, IIEC/CUB/FEA mischaracterize the rate case parties’ respective burdens of proof. AIC explains that Illinois law does not require a utility to embark upon a full dress justification of its rate structure (*Antioch Milling Co. v. Pub. Serv. Co.*, 4 Ill. 2d 200, 209 (1954)), but rather, “[o]nce a utility makes a showing of the costs necessary to provide service under its proposed charges, it has established a prima facie case, and ‘[t]he burden then shifts to others to show that the costs incurred by the utility are unreasonable because of inefficiency or bad faith.’” *Apple Canyon Lake Prop. Owners’ Ass’n v. Ill. Commerce Comm’n*, 2013 IL App (3d) 100832, ¶ 54 (Mar. 5, 2013) (quoting *Ill. Bell Tele. Co. v. Ill. Commerce Comm’n*, 327 Ill. App. 3d 768, 776 (3d Dist. 2008)). See also *Ameren Ill. Co.*, Docket No. 16-0262, Order at 16 (Dec. 6, 2016).

AIC explains that in addition to its Part 285 schedules, AIC provided in this proceeding testimony supporting its AMS costs and variances in those costs over the 2018 levels and extensive data detailing the costs and their attendant services—namely, the extensive AMS cost reporting annually required by the GSA. AIC notes that it provided even more information to the parties in support of its AMS costs in discovery and with its rebuttal and surrebuttal filings. Thus, AIC asserts, it met its initial burden of proof to support the prudence and reasonableness of its AMS costs. See Docket No. 16-0262, Order at 17; *Apple Canyon*, 2013 IL App (3d) 100832, ¶ 54.

AIC states that IIEC/CUB/FEA’s Initial Brief is full of unsubstantiated, inflammatory statements, most notably, IIEC/CUB/FEA insinuate *nine times* in Initial Brief that AIC has recovered \$1.2 billion in AMS costs from customers over the past seven years. AIC asserts that allegation is false and the Commission should disregard the improper suggestion. AIC explains that, as the evidence shows, total AMS charges to AIC on Ameren’s FERC Form 60—the source of IIEC/CUB’s numbers—are before allocations among AIC’s gas, electric distribution, and electric transmission operations, before ratemaking adjustments, and before capitalized treatment.

Additionally, AIC suggests IIEC/CUB/FEA’s audit proposal lacks detail. AIC explains that IIEC/CUB/FEA witness Gorman mentioned his audit proposal in passing only, in a single sentence: “I recommend the [Commission] implement an audit of AMS total costs to ensure that the costs allocated to AIC for services provided to the electric distribution and gas delivery systems are reasonable for services provided.” AIC notes that it was not until his rebuttal testimony, confronted with AIC testimony that his audit proposal was wholly undeveloped and undefined that IIEC/CUB/FEA witness Gorman offered the six general parameters for his proposal that IIEC/CUB/FEA recite in Initial Brief. AIC opines that all of these things have already happened in this case and in AIC’s past rate cases.

AIC concludes that IIEC/CUB/FEA had the tools (ample AMS cost data, the discovery process) and the time (the statutory rate case period) in this proceeding to

investigate the prudence and reasonableness of AIC's AMS costs. AIC states that the Commission has repeatedly found that the time and place to review AMS cost has been and remains in AIC's rate cases. So, AIC maintains that there is no reason to impose—on AIC, its customers, or Staff—the time, resource demands, and expense of an unnecessary, unlawful, unworkable, and costly independent third-party audit of AMS costs. AIC maintains that, as it did in Docket Nos. 16-0287, 17-0197, and 19-0436, the Commission should again reject IIEC/CUB/FEA witness Gorman's third-party audit proposal.

b) Staff's Position

Staff maintains that the Commission should not adopt the IIEC/CUB/FEA recommendation that the Commission implement an audit of AMS total costs. Staff argues that the evidence in this case is insufficient to show that the benefits of the audit would outweigh the cost of the audit, which would be recovered from AIC ratepayers.

Staff argues that the Company's GSA was approved in Docket No 16-0287, in which IIEC/CUB/FEA witness Gorman testified on behalf of IIEC/CUB (Staff Ex. 9.0 (Conf.), at 34-36) and IIEC/CUB/FEA witness Gorman recommended the Commission require a third-party audit comparing total AMS costs for providing services with alternative non-affiliated suppliers of comparable services. *Ameren Ill. Co.*, Docket No. 16-0287, Order at 20 (April 7, 2017). Staff explains that neither AIC nor Staff supported the third-party audit proposal. Specifically, Staff states that it opposed the request because the proposal failed to identify the frequency, process for designating an auditor, or scope of the audit. Staff argues that it also found that the audit would duplicate the validation efforts provided for in Appendix C of the GSA. Finally, Staff notes that the costs would be recovered from AIC ratepayers without a corresponding benefit. *Id.* at 24.

Further, Staff states that in Docket No. 19-0436, AIC's prior year electric distribution formula rate update, IIEC/CUB/FEA witness Gorman (on behalf of IIEC/CUB) recommended that the Commission open an investigation of AMS total service company costs, assess whether or not these costs are reasonable, and determine whether the specific costs to AIC represent just and reasonable costs for services provided. Staff Ex. 9.0 (Conf.), 35-36. Staff avers that in Docket No. 19-0436, IIEC/CUB admitted they had also made a similar request in Docket No. 17-0197, yet the Commission declined. *Ameren Ill. Co.*, Docket No. 19-0436, Order at 43-44 (Dec. 16, 2019).

Staff contends that the Commission should not adopt the IIEC/CUB/FEA recommendation to implement an audit of AMS total costs because the Commission has declined this proposal in three previous orders (in Docket Nos. 16-0287, 17-0197, and 19-0436) and the evidence in this case is insufficient to show that the cost of the audit which would be recovered from AIC ratepayers would be outweighed by the benefits of the audit.

c) IIEC/CUB/FEA's Position

IIEC/CUB/FEA state they are once more contesting the recovery of AMS costs from AIC ratepayers because the costs keep increasing, and while AIC and Staff only focus on the allocation protocols, they either ignore or overlook the uncontested fact that

none of these costs have been scrutinized and tested for prudence and reasonableness – as are other expenses.

IIEC/CUB/FEA stress AMS total costs have increased from approximately \$341.6 million in 2013 to \$504.6 million in 2019, and yet no regulatory commission, state or federal, has verified the cost of services AMS provides to AIC are reasonable and responsible. IIEC/CUB/FEA Ex. 1.0 at 6. IIEC/CUB/FEA note that during this time AIC customers have paid in excess of \$1.2 billion dollars in AMS charges. IIEC/CUB/FEA Ex. 1.0 at 7, Table 2.

IIEC/CUB/FEA point out that as the costs have increased, so too has AIC's cost responsibility. IIEC/CUB/FEA note AIC's percentage of total AMS cost allocation increased from around 38% in 2013 to around 44% to 45% in 2014-2016 and has further escalated to approximately 47% to 48% in 2018-2019. IIEC/CUB/FEA Ex. 1.0 at 8. IIEC/CUB/FEA believe the Commission must review the significant dollar impacts to customers.

IIEC/CUB/FEA concede this case is not the first time they have raised the alarm regarding AMS costs. In Docket No. 16-0262, IIEC-CUB noted significant increases in total AMS costs, with over half of the increase being allocated to AIC. Docket No. 16-0262, Order at 13. IIEC/CUB/FEA acknowledge that they then recommended certain adjustments to the AMS costs charged to AIC, which the Commission declined. *Id.* at 17-18. IIEC/CUB/FEA aver that while the Commission noted that IIEC-CUB were "rightly concerned" about AIC's increasing Administrative and General ("A&G") expenses, and "specifically the AMS expenses", it simply asserted that it would continue to closely examine Ameren's A&G expenses in future proceedings." *Id.* at 18. IIEC/CUB/FEA proffer that since then AIC has tempered increasing its portion of responsibility for AMS costs by approximately \$63.9 million, and cumulatively required customers to pay to AMS approximately \$435.6 million.

IIEC/CUB/FEA argue that in Docket No. 17-0197, faced with yet another significant increase in AMS charges to AIC, IIEC-CUB once more proposed an independent third-party audit of total AMS costs, but the Commission declined the IIEC-CUB proposal.

IIEC/CUB/FEA argue that despite the very real and significant expenditure in excess of \$1.2 billion dollars in seven years, AIC ratepayers have yet to experience any entity actually reviewing the actual costs AMS is allocating to AIC. IIEC/CUB/FEA assert the benefit of an independent third-party audit of total AMS service costs, or costs billed to AIC, would determine whether AMS reasonably manages its costs, and is able to provide services to AIC at just and reasonable prices.

IIEC/CUB/FEA note the Commission is charged with protecting the public interest for Illinois ratepayers and utilities. Docket No. 16-0287, Dissent at 5 (Apr. 20, 2017). IIEC/CUB/FEA argue that it strongly believes part of that protection should responsibly include assurance that \$1.2 billion dollars in payments over seven years to an affiliated service company, represents no more than fair and reasonable charges for the types of services provided. IIEC/CUB/FEA contend that AIC customers are entitled to some assurance that every dollar they are asked to pay for AMS service, has been reviewed and deemed prudent.

IIEC/CUB/FEA note, AIC witness Perniciaro, when asked to respond to IIEC/CUB/FEA witness Gorman's concern about the increase in total AMS costs, stated, "[o]ther than to note the fact of the increase (\$1.2 billion paid since 2013) itself, he does not explain his concern." AIC Ex. 24.0 at 2. IIEC/CUB/FEA find the undisputed increases in AMS costs to AIC should warrant the interest of a public body tasked with protecting the ratepayer interest.

IIEC/CUB/FEA contend that AIC expresses concerns that AIC customers would bear the cost of an audit, but is seemingly unconcerned with the \$1.2 billion it has paid to its affiliate. AIC Ex. 24.0 at 8. IIEC/CUB/FEA maintain that it serves AIC and Ameren Corporation's shareholders to have the Commission overlook the risks and operational implications presented by the intermingling of a regulated utility and an unregulated service company, both subject to 100% ownership by a parent company, all having a vested interest to maximize profits, under the auspices of saving Illinois customers money. IIEC/CUB/FEA argue that they find it is self-evident that the benefit of an audit, where hundreds of millions of dollars are at issue annually, would significantly out-weigh the cost of any audit.

IIEC/CUB/FEA note AIC continues to oppose an independent third-party audit relying only on the internal audit required annually by the GSA and external audits related to SEC filings and routine FERC audit requirements. Ameren Ex. 24.0 at 6. However, IIEC/CUB/FEA argue that these audits are not independent nor extensive, stating such audits do not assess the reasonableness of the AMS costs being allocated.

IIEC/CUB/FEA assert the importance of the independent nature of an audit was emphasized in the dissent of Commissioner Miguel del Valle in Docket No. 16-0287:

Under no circumstances should a regulator rely upon a regulated utility to inform that regulator when and how that regulated utility is engaging in the inappropriate activity which the regulator exists to prevent. The Commission's oversight and supervision of the GSA must be aided by an independent third-party auditor, or better yet a robust Staff audit.

Docket No. 16-0287, Dissent at 3, Fn. 15 (Apr. 20, 2017).

IIEC/CUB/FEA argue GSA audits are not sufficient for several reasons. First, they assert the stated goals of a GSA audit are in the context of an internal audit, rather than an external audit. Second, these audit goals do not focus on the reasonableness and prudence of AMS "actual costs" themselves. IIEC/CUB/FEA Ex. 3.0 at 8-9; see *also* 83 Ill. Adm. Code 416.30. Third, the audits do not assess the reasonableness of AMS actual costs, to ensure that these costs when allocated across all Client Companies generally, and AIC specifically, produce reasonable charges for the services AMS provides to those companies.

IIEC/CUB/FEA proffer that a proper and more thorough method for examining the reasonableness of AMS charges for services provided is necessary to examine the charges with the same level of detail the Commission typically invokes for establishing whether or not a utility's revenue requirement, cost of service, and rate design for utility services, result in just and reasonable prices to customers. IIEC/CUB/FEA note, in a

typical utility rate case proceeding, the Commission examines the utility's revenue requirement by jurisdiction, appropriate allocation of that revenue requirement across customer rate classes, and ultimately the design of rates within each rate class. IIEC/CUB/FEA Ex. 3.0 at 8.

IIEC/CUB/FEA suggest a review of total AMS "actual costs" would be equivalent to examining the reasonableness of the revenue requirement used to set rates within a rate case, examining the utility's actual cost of service, and determining if it reflects prudent management and reasonable costs. In a rate case, a utility's revenue requirement is not simply assumed to be reasonable, and allocated across rate classes, based on a simple assessment of the allocation factors. However, that is precisely how AMS actual costs are allocated across all Client Companies generally, and AIC specifically. IIEC/CUB/FEA argue no determination is being made as to the prudence and reasonableness of AMS total "actual costs." IIEC/CUB/FEA Ex. 3.0 at 8; see *also* 83 Ill. Adm. Code 416.30.

IIEC/CUB/FEA stress AMS's allocation or assignment of costs across all of its companies, including AIC, do not include an assessment of the AMS revenue requirement necessary to provide the services to all of the Client Companies. IIEC/CUB/FEA Ex. 3.0 at 8-9. IIEC/CUB/FEA aver that AMS total actual costs are simply accepted after a limited review of the year-over-year increase through the GSA's variance report, and then spread across all affiliate companies, unlike in a rate case where the revenue requirement is excessive or includes imprudent or unreasonable costs, the allocation of those costs across rate classes (Client Companies) in the development of retail rates (AMS service charges) would not be just and reasonable. IIEC/CUB/FEA argue a similar assessment would be beneficial with regard to AMS costs.

IIEC/CUB/FEA contend the previous rejections of proposals for an independent third-party audit should not weigh heavily in this proceeding. IIEC/CUB/FEA opine that a regulator should not rely upon a regulated utility (AIC) and its affiliate (AMS) to inform the regulator when and how that regulated utility is engaging in the inappropriate activity which the regulator exists to prevent.

IIEC/CUB/FEA believe former Commissioner Miguel del Valle captures the issue succinctly stating, "[t]he Commission has historically paid insufficient attention to the relationship between the public utility it regulates and its affiliates. These relationships represent a real risk and the Commission is charged by the Act with ensuring their contracts or agreements are in the public interest lest they be void." *Ameren III. Co.*, Docket No. 16-0287, Dissent at 7 (Apr. 20, 2017). He added, when insufficient attention is paid, "the Commission also ignores the risks and operational implications presented by the intermingling of a regulated utility and an unregulated service company, both subject to 100% ownership by a parent company engaged in diverse and multi-state business . . . [t]hese corporate persons all have a vested interest to maximize profits." *Id.* at 6-7.

In short IIEC/CUB/FEA stress the internal audit required by the GSA offers little to protect AIC consumers with regard to AMS costs.

IIEC/CUB/FEA assert with regard to the SEC audits, AIC conveniently ignores the fact that AMS and ATXI are not SEC registrants, and as such, external audits of these entities are not required for SEC filings. IIEC/CUB/FEA Group Cross Ex. 5.0 at 35.

IIEC/CUB/FEA note, a quick reading of the Report of Independent Registered Public Accounting Firm notes the SEC audits the balance sheets, related statements of income and comprehensive income, of shareholders' equity and cash flows to determine if the financial statements present fairly the financial position of the company, and are in conformity with generally accepted accounting principles. *Id.* at 35 (referring to AG 23.02 Att. 1 & 2). IIEC/CUB/FEA maintain, nowhere is there an assessment of either the reasonableness of total AMS costs that are allocated to AIC, or a verification that the costs AIC pays for services provided by AMS are reasonable.

IIEC/CUB/FEA aver FERC audits suffer from the same lack of oversight for AMS costs. IIEC/CUB/FEA emphasizes, nowhere in the audit report is there an assessment of the prudence and reasonableness of total AMS costs, or proof that the costs AIC pays for services provided by AMS are reasonable. IIEC/CUB/FEA argues that it does not believe these audits serve as a substitute for independent regulatory oversight by Commission, its Staff, or an independent audit process.

IIEC/CUB/FEA note it is alleged IIEC/CUB/FEA witness Gorman "largely still leaves the details of his audit proposal for the Commission or its Staff to work out," and issue is taken with IIEC/CUB/FEA witness Gorman allegedly leaving the specific terms of the audit up to the Commission. Ameren Ex. 7. IIEC/CUB/FEA argue Mr. Gorman has in fact suggested what he believes, at a minimum, the audit should include, but leaves the specific terms of the audit to the authority tasked with protecting AIC consumers. IIEC/CUB/FEA suggest the proposed audit should at least include the following parameters:

- (1) It should be conducted over a specific time period such as a test year examination of AMS's actual costs.
- (2) Historical data should be available to compare to the test year data to determine whether or not the test year reflects normalized costs of providing services.
- (3) AMS should justify its level of employees based on the services it is providing across all Client Companies.
- (4) To the extent AMS needs to increase or decrease employees, that should be defined and outlined within the test year construct, to assess the appropriateness of labor-related costs.
- (5) The services provided will dictate the general plant and technology facilities necessary to provide services AMS provides to affiliate companies. These capital investments, including buildings and office space, should be outlined and explained within AMS's budgeting process through a means that clearly defines whether or not the investments made by AMS are necessary to accomplish its objective of providing high quality services to Client Companies.
- (6) With this outline at a minimum, the Commission can have an audit of the total AMS actual costs, relative to the services provided, and the auditor can confirm whether or not AMS actual costs are reasonable in comparison to the services provided, or whether or not there are certain

excessive costs that need to be stripped from the AMS actual costs in allocating such costs to AIC. Sending a message to AMS that it has costs that are not appropriate to allocate to AIC will send a strong signal to AMS and Ameren Corporation that these excessive costs need to be eliminated from AMS, or such costs could have negative financial implications on Ameren Corporation.

Further, IIEC/CUB/FEA argue the previous rejections of IIEC/CUB/FEA proposals for an independent third-party audit were bad policy. IIEC/CUB/FEA state that they do not believe a regulator should rely upon a regulated utility to inform the regulator when and how that regulated utility is engaging in the inappropriate activity which the regulator exists to prevent. IIEC/CUB/FEA proffer that the audits referenced by AIC in support of the rejection of IIEC/CUB/FEA's proposal rely on information about AIC and AMS, from AIC and AMS for verification of actions taken by AIC and AMS and thus offer little to protect Illinois consumers.

IIEC/CUB/FEA, again propose the Commission implement an audit of AMS total costs to ensure that the costs allocated to AIC for services provided to the electric distribution and gas delivery systems are reasonable for services provided. IIEC/CUB/FEA maintain when a utility company allocates \$1.2 billion dollars to an affiliated company over a seven-year period and that \$1.2 billion dollars is paid by AIC customers, those customers deserve every assurance that their money is being allocated properly, and that they are receiving services commensurate with that amount and the costs themselves are reasonable.

d) Commission Analysis and Conclusion

The Commission declines to adopt IIEC/CUB/FEA's proposal to implement a separate external audit of AMS total costs. IIEC/CUB/FEA claim that a separate external audit is necessary because the current audit goals do not focus on the reasonableness and prudence of AMS "actual costs" and IIEC/CUB/FEA do not believe a regulator should rely upon a regulated utility to inform the regulator when and how that regulated utility is engaging in the inappropriate activity. However, IIEC/CUB/FEA fail to show that AIC is engaging in inappropriate activity or that there is sufficient evidence in this case to show that the benefits of the audit would outweigh the cost of the audit, which would be recovered from AIC ratepayers.

The Commission notes that this is the fourth time that IIEC/CUB/FEA have requested an independent audit of AIC's total AMS costs and that the Commission has declined to adopt the suggestion each time. IIEC/CUB/FEA do not claim to present any new or additional information and only cites increased AMS costs over the years. However, as AIC argues, IIEC/CUB/FEA witness Gorman shows that AIC's portion of total AMS costs has remained consistent, fluctuating only 1% to 2% year-over-year over the 2013 to 2019 period and the Commission has already assessed the prudence and reasonableness, and approved recovery of those historical AMS costs in AIC's past electric and gas rate cases.

Additionally, in Docket No. 16-0287 the Commission implemented new reporting and record-keeping requirements, to ensure that AIC provides the Commission with information regarding affiliate costs annually to determine whether company services are

provided at rates that are prudent and reasonable.” Docket No. 16-0287, Order at 25. The Commission finds that this is still appropriate, and IIEC/CUB/FEA have not shown evidence to the contrary.

The Commission notes that IIEC/CUB/FEA do not dispute the majority of AIC's test year AMS costs and did not identify any particular AMS service or its cost in this case that they claim is imprudent or unreasonable. The Commission finds that the audit process the Commission adopted in Docket No. 16-0287 continues to provide sufficient detail for parties to review annual changes in the cost of service provided by AMS and the parties to the annual formula rate proceedings can assess the prudence and reasonableness of AMS's services and costs. The Commission declines IIEC/CUB/FEA's proposal to implement a separate external audit of AMS total costs.

X. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Ameren Illinois Company d/b/a Ameren Illinois is an Illinois corporation engaged in the storage, transmission, distribution, and sale of natural gas to the public in the State of Illinois and, as such, is a “public utility” as defined in Section 3-105 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record, and are hereby adopted as findings of fact and conclusions of law; the Appendix attached hereto provides supporting calculations;
- (4) the test year in this proceeding is a future test year consisting of the 12 months ending December 31, 2021; such test year is appropriate for purposes of this proceeding;
- (5) the 2020 QIP amounts included in base rates are comprised of \$172,926,005 of net forecasted investment, related accumulated depreciation of \$9,612,819 (increase to net forecasted investment), related accumulated deferred income taxes of \$1,988,892 (decrease to net forecasted investment), resulting in NetQIP of \$180,549,932 and \$2,494,890, for annualized depreciation expense less annualized depreciation expense applicable to the plant being retired;
- (6) the \$3,077,015,000 original cost of plant for AIC at December 31, 2018, as presented in Ameren Ex. 3.1, is the original cost of plant;
- (7) AIC's gas delivery service rates which are presently in effect are insufficient to generate the operating income necessary to permit it the opportunity to earn a fair and reasonable return on net original cost rate base; the proposed tariffs should be permanently canceled and annulled;

- (8) the rates proposed by AIC would produce a rate of return in excess of a return that is fair and reasonable; the proposed rates should be permanently canceled and annulled consistent with the findings herein;
- (9) AIC should be allowed to earn a just and reasonable return of 6.970% on its net original cost rate base, which incorporates a return on common equity of 9.490%;
- (10) AIC should be authorized to place into effect tariff sheets designed to produce annual gas delivery service revenues as shown in the Appendix to the Order, Schedule 1; the new tariff sheets shall reflect an effective date not less than five working days after the date of filing, with the tariff sheets to be corrected within that time period if necessary, except as is otherwise required by Section 9-201(b) of the Act;
- (11) the determinations regarding cost of service, interclass revenue allocations, rate design, and tariff terms and conditions, as are contained in the prefatory portion of this Order, are reasonable for purposes of this proceeding and are adopted, and shall be incorporated into the tariffs filed by AIC; and
- (12) the Motion for Administrative Notice filed by the Illinois Attorney General's Office on October 5, 2020 is denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the tariff sheets presently in effect rendered by Ameren Illinois Gas Company d/b/a Ameren Illinois are hereby permanently canceled and annulled, effective at such time as the new tariff sheets approved herein become effective by virtue of this Order.

IT IS FURTHER ORDERED that the proposed tariffs seeking a general rate increase, filed by Ameren Illinois Gas Company d/b/a Ameren Illinois on February 21, 2020, are permanently canceled and annulled.

IT IS FURTHER ORDERED that the \$3,077,015,000 original cost of plant for Ameren Illinois Company d/b/a Ameren Illinois at December 31, 2018, as presented in Ameren Exhibit 3.1, is unconditionally approved as the original cost of plant.

IT IS FURTHER ORDERED that Ameren Illinois Gas Company d/b/a Ameren Illinois is authorized to file new tariff sheets with supporting workpapers in accordance with Findings (7) through (11) of this Order applicable to service furnished on and after the effective date of said tariff sheets.

IT IS FURTHER ORDERED that the Motion for Administrative Notice filed by Illinois Attorney General's Office on October 5, 2020 is denied.

IT IS FURTHER ORDERED that any motions, petitions, objections, and other matters in this proceeding that remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, any application for rehearing shall be filed within 30 days after service of the Order on the party.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:
BRIEFS ON EXCEPTIONS DUE:
REPLY BRIEFS ON EXCEPTIONS DUE:

November 12, 2020
December 1, 2020
December 8, 2020

Heather M. Jorgenson,
Marchant Johnson,
Administrative Law Judges